REPORT OF THE GOVERNMENT OF BENGAL

ON THE

BENGAL SECRETARIAT

BENGAL TENANCY BILL, 1884.

WITH APPENDICES.

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CONTENTS.

	Page.
Letter from D. Fitzpatrick, Esq., Secretary to the Government of India, Legislative Department, to the Secretary to the Government of Bengal,—No 784, dated Simla, the 5th May 1884	1
Circular from A. P. MacDonnell, Esq., Officiating Secretary to the Government of Bengal, Revenue Department, to all Commissioners of Divisions,—No. 3T—R, dated Darjeeling, the 24th May 1884 ...	13
Statement showing the principal food-grains of all districts, except those of the Chota Nagpore and Orissa Divisions, and the approximate proportion which the outturn of each bears to the entire outturn of food-grains in the district	27
Statement showing the mean highest and lowest rates per maund of ordinary sacking and bagging jute in the Serajgunge Bazar from 1868 to 1883	28
Mr. H. L. Dampier's notes on the second edition of the Bengal Tenancy Bill put forth by the Select Committee of the Legislative Council of the Governor-General,—dated the 26th July 1884	29
Annexure A. to Mr. Dampier's minute	59
Letter from H. J. S. Cotton, Esq., to the Secretary to the Government of Bengal, Revenue Department,—dated Calcutta, the 18th August 1884	63
Letter from F. M. Halliday, Esq., Commissioner of the Patna Division, to the Secretary to the Government of Bengal, Revenue Department,—No. 47R, dated Bankipore, the 6th August 1884 ...	65
Remarks on price-lists by the Collectors of Chumparun, Mozufferpore, and Durbhunga	83
Mr. Nolan's proposal for the extension of the Bengal Drainage Act (VI of 1880) to irrigation	87
Letter from the Superintending Engineer, Sone Circle, to the Collector of Shahabad,—No. 3870, dated Arrah, the 21st July 1884 ...	87
Letter from Messrs. Burrows, Thomson, and Mylne to the Collector of Shahabad,—No. 4318, dated the 31st July 1884	88
Mr. Forbes' proposal with regard to the restrictions placed on subletting in cases in which indigo-planters are concerned, together with the objections and remarks made by the other Collectors of the Division, and Mr. Forbes' reply on certain points ...	89
Letter from F. M. Halliday, Esq., Commissioner of the Patna Division, to the Secretary to the Government of Bengal, Revenue Department,—No. 70R, dated Bankipore, the 3rd September 1884 ...	93
Letter from A. Forbes, Esq., Officiating Collector of Sarun, to the Commissioner of the Patna Division,—No. 818G, dated Chupra, the 30th August 1884	95
Letter from F. M. Halliday, Esq., Commissioner of the Patna Division, to the Secretary to the Government of Bengal, Revenue Department,—No. J, dated Bankipore, the 2nd October 1884	97
Letter from P. Nolan, Esq., Officiating Collector of Shahabad, to the Commissioner of the Patna Division,—No. 1662G, dated Arrah, the 23rd September 1884	99
Letter from G. N. Barlow, Esq., C.S.I., Commissioner of the Bhagulpore Division and Sonthal Pergunnahs, to the Secretary to the Government of Bengal, Revenue Department,—No. 1836R, dated Bhagulpore, the 12th August 1884	101
Report of Proceedings of a Conference upon the Bengal Tenancy Act held at Bhagulpore during August 1884	101
Statement showing the number of partitions sanctioned and completed during each decade in the districts of the Bhagulpore Division, beginning from end of 1882-83 and counting back to the earliest date of which the records furnish information	115
Statement showing the total number of occupancy holdings sold, and the number purchased by mahajans in the Regulation Districts of the Bhagulpore Division during the years 1880, 1881, and 1882, according to the records of the Civil Court and Registration Offices ...	115
Statement showing the principal food-grains of all districts, except those of the Chota Nagpore and Orissa Divisions, and the approximate proportion which the outturn of each bears to the entire outturn of food-grains in the district	121

PAGE

Statement showing the mean, highest and lowest rates per maund of ordinary sacking and bagging jute in the Serajgunge Bazar from 1868 to 1883 122
Memorandum of dissent by W. H. D'Oyly, Esq., Collector of Bhagulpore 123
Memorandum of dissent by Mr. Weekes, Collector of Purneah . 127
Letter from G. N. Barlow, Esq., C.S.I., Commissioner of the Bhagulpore Division and Sonthal Pergunnahs, to the Secretary to the Government of Bengal, Revenue Department,—No. 1893B, dated Bhagulpore, the 16th August 1884 129
Memorandum of dissent by R. Porch, Esq., Collector of Maldah ... 131
Letter from John Beames, Esq., Commissioner of the Burdwan Division, to the Secretary to the Government of Bengal, Revenue Department,—No. 480, dated Chinsurah, the 8th August 1884 ... 137
Memorandum by R. H. Wilson, Esq., Officiating Commissioner of the Burdwan Division,—No. 65, dated Chinsurah, the 18th September 1884 151
Memorandum by H. Fasson, Esq., Officiating Collector of Burdwan,—No. 999G, dated Burdwan, the 9th September 1884 153
Notes by R. H. Wilson, Esq., on the Bengal Tenancy Bill, 1884 ... 155
Memorandum by R. H. Wilson, Esq., on the proposed field survey of Bengal 165
Letter from A. Smith, Esq., Commissioner of the Presidency Division, to the Secretary to the Government of Bengal, Revenue Department,—No. 17RL, dated Calcutta, the 28th July 1884 167
Note by C C. Stevens, Esq , Collector of 24-Pergunnahs, on the Report of the Conference 175
Note by E. J. Barton, Esq., Collector of Jessore, on the Report of the Conference 177
Note by F. H. Barrow, Esq., Collector of Khulna, on the Report of the Conference 179
Telegram from the Secretary to the Government of Bengal, Revenue Department, to the Commissioner of the Presidency Division, Calcutta,—dated Darjeeling, the 31st August 1884 181
Letter from A. Smith, Esq., Commissioner of the Presidency Division, to the Secretary to the Government of Bengal, Revenue Department,—No. 24RL, dated Calcutta, the 17th September 1884 183
Letter from W. R. Larminie, Esq., Commissioner of the Orissa Division, to the Secretary to the Government of Bengal, Revenue Department,—No. 913, dated Cuttack, the 9th August 1884 185
Telegram from the Secretary to the Government of Bengal, Revenue Department, to the Commissioner of the Orissa Division,—dated Darjeeling, the 19th August 1884 189
Telegram from the Commissioner of the Orissa Division to the Secretary to the Government of Bengal, Revenue Department, Darjeeling,—dated Cuttack, the 20th August 1884 191
Letter from W. R. Larminie, Esq., Commissioner of the Orissa Division, to the Secretary to the Government of Bengal, Revenue Department,—No. 959, dated Cuttack, the 21st August 1884 ... 193
Letter from E. E. Lowis, Esq., Commissioner of the Chittagong Division, to the Secretary to the Government of Bengal, Revenue Department,—No. 47Ct., dated Camp Comillah, the 9th August 1884 ... 195
Letter from H. J. S. Cotton, Esq., Officiating Commissioner of the Chittagong Division, to the Secretary to the Government of Bengal, Revenue Department,—No. 271GC, dated Chittagong, the 10th July 1884 ... 213
Memorandum on the Bengal Tenancy Bill by H. J. S. Cotton, Esq., Officiating Commissioner of the Chittagong Division 213
Letter from N. S. Alexander, Esq., Officiating Commissioner of the Dacca Division, to the Secretary to the Government of Bengal, Revenue Department, No. 377G, dated Dacca, the 6th August 1884 ... 223
Letter from R. C. Dutt, Esq., Officiating Collector of Backergunge, to the Commissioner of the Dacca Division,—No. 458LR, dated Barisal, the 18th July 1884 227
Letter from E. G. Glazier, Esq., Collector of Mymensingh, to the Secretary to the Government of Bengal, Revenue Department,—No. 1865—42G, dated Mymensingh, the 27th October 1884 245
Letter from E. G. Glazier, Esq., Collector of Mymensingh, to the Commissioner of the Dacca Division,—No. 1005—42G, dated Mymensingh, the 14th July 1884 245
Letter from A. P. MacDonnell, Esq., Secretary to the Government of Bengal, Revenue Department, to the Commissioner of the Rajshahye Division,—No. 1900T—R, dated Darjeeling, the 13th September 1884 249

PAGE.

Letter from A. P. MacDonnell, Esq., Secretary to the Government of Bengal, to the Secretary to the Government of India, Legislative Department,—No. 2105T—R, dated Darjeeling, the 3rd October 1884 251
Circular from Lord H. Ulick Browne, Commissioner of the Rajshahye Division, to District Officers of the Rajshahye Division,—No. 221Rot., dated Darjeeling, the 7th June 1884 253
Letter from Lord H. Ulick Browne, Commissioner of the Rajshahye Division, to the Secretary to the Government of Bengal, Revenue Department,—No 424Rot., dated Darjeeling, the 16th August 1884 261
Note by C. W. Bolton, Esq. 287
Note by W. Oldham, Esq. 291
Letter from J. F. K. Hewitt, Esq., Commissioner of the Chota Nagpore Division, to the Secretary to the Government of Bengal, Revenue Department,—No. 590R, dated Chota Nagpore, the 11th August 1884 293
Letter from Rai Jodunath Mookerjee, Government Pleader, Hazaribagh, to the Deputy Commissioner of Hazaribagh,—No. 20, dated Hazaribagh, the 16th June 1884 295
Memorandum by M. Finucane, Esq., on the Report and Revised Bill of the Select Committee on the Bengal Tenancy Bill 297
Note by W. Oldham, Esq., on Bastu in the Sonthal Pergunnahs ... 301
Letter from C. S. Bayley, Esq., Officiating Registrar of the High Court of Judicature at Fort William in Bengal, to the Secretary to the Government of Bengal, Revenue Department,—No. 2062, dated Calcutta, the 11th August 1884 305
Letter from C. S. Bayley, Esq., Officiating Registrar of the High Court of Judicature at Fort William in Bengal, to the Secretary to the Government of India, Legislative Department,—No. 1986, dated Calcutta, the 8th August 1884 307
Letter from C. B. Garrett, Esq., Officiating Superintendent and Remembrancer of Legal Affairs, to the Secretary to the Government of Bengal, Revenue Department,—No. 613, dated Calcutta, the 26th July 1884 309
Letter from H. W. Gordon, Esq., District Judge of Sarun, to the Secretary to the Government of Bengal, Revenue Department,—No. 320, dated Chupra, the 30th July 1884 323
Letter from J. Tweedie, Esq., District Judge of Shahabad, to the Secretary to the Government of Bengal, Revenue Department,—No 523, dated Arrah, the 5th August 1884 331
Report by J. Tweedie, Esq., Judge of Shahabad, on the Bengal Tenancy Bill 333
Demi-official from J. Tweedie, Esq., to the Secretary to the Government of Bengal, General Department,—dated Arrah, the 27th August 1884 345
Proposed recast of the "Judicial Procedure" sections of the "Bengal Tenancy Bill" 347
Letter from J. B. Worgan, Esq., Officiating Judge of Cuttack, to the Secretary to the Government of Bengal, Revenue Department,—No. 633, dated Cuttack, the 31st July 1884 363
Letter from G. E. Porter, Esq., Judicial Commissioner of Chota Nagpore, to the Secretary to the Government of Bengal, Revenue Department,—No. 1119, dated Ranchi, the 29th August 1884 369
Letter from Baboo Mohendro Nath Mitter, Subordinate Judge of Burdwan, to the Officiating Secretary to the Government of Bengal, Revenue Department,—No. 22, dated Burdwan, the 31st July 1884 375
Letter from Baboo Nuffer Chandra Bhatta, Second Subordinate Judge, 24-Pergunnahs, to the Secretary to the Government of Bengal, Revenue Department—dated the 26th July 1884 381
Letter from Baboo Bhagwan Chundra Chackrabarti, Subordinate Judge, Khulna, to the Secretary to the Government of Bengal, Land Revenue Department,—No. 125, dated Khulna, the 31st July 1884 ... 383
Letter from Baboo Amrito Lal Chatterjee, Subordinate Judge of Nuddea, to the Secretary to the Government of Bengal, Revenue Department,—dated Krishnaghur, the 2nd August 1884 385
Letter from Baboo Beni Madhub Mitter, Subordinate Judge of Backergunge, to the Officiating Secretary to the Government of Bengal, Revenue Department,—No. 8, dated Barisal, the 1st August 1884 ... 389
Letter from Baboo Aughore Nath Ghosh, Second Subordinate Judge of Tipperah, to the Secretary to the Government of Bengal, Revenue Department,—dated Comillah, the 30th July 1884 393
Letter from Baboo Nobin Chundra Gangooly, Subordinate Judge of Rungpore, to the Secretary to the Government of Bengal, Revenue Department,—dated Rungpore, the 30th July 1884 401

PAGE.

Letter from Syed Moazzim Hossein, Judge, Small Cause Court, Magura, to the Officiating Secretary to the Government of Bengal, Revenue Department,—dated Magura, the 16th July 1884 403

Letter from Baboo Sree Nath Roy, Judge of the Court of Small Causes, Hooghly, Serampore, and Howrah, to the Secretary to the Government of Bengal, Revenue Department,—No. 142, dated Howrah, the 30th July 1884 407

Letter from Baboo Mohendra Nath Bose, Judge, Court of Small Causes, Sealdah, to the Secretary to the Government of Bengal, Revenue Department,—dated Sealdah, the 31st July 1884 411

Letter from Baboo Krishna Chundra Das, Third Munsif. Chupra, to the Under-Secretary to the Government of Bengal, Revenue Department,—No. 35, dated Chupra, the 25th August 1884 415

Letter from Baboo Chandi Charan Sen, First Munsif of Barisal, to the Secretary to the Government of Bengal, Revenue Department,—No. 12, dated Barisal, the 19th July 1884 419

Extract from the judgment of the First Munsif of Barisal in the enhancement suits Nos. 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576. 2622, and 2623 of 1883 431

Letter from Baboo Vipina Chandra Rai, B.A., B.L., Munsif of Baraset, to A. P. MacDonnell, Esq., Officiating Secretary to the Government of Bengal 439

Letter from Baboo Jagadiswar Gupta, First Munsif of Bagirhat, to the Secretary to the Government of Bengal,—No. 118, dated Bagirhat, the 5th September 1884 447

Letter from Baboo Khetter Prasad Mookerjee, First Munsif of Atia, Mymensingh, to the Secretary to the Government of Bengal, Revenue Department,—dated Tangail, the 28th July 1884 ... 453

Letter from Baboo Chandra Kumar Roy, M.A., B.L., First Munsif of Shadharam (Noakholly), to the Secretary to the Government of Bengal, Revenue Department,—No. 47, dated Noakholly, the 28th July 1884 459

Letter from the Sudder Munsif of Dinagepore to the Officiating Secretary to the Government of Bengal, Revenue Department,—No. 25, dated Dinagepore, the 28th July 1884 469

Letter from Baboo Krishnadhan Chaudhuri, First Munsif of Gaibandha, Rungpore, to the Officiating Secretary to the Government of Bengal, Revenue Department,—dated Gaidandha, the July 1884 ... 477

Letter from Baboo Kailas Chandra Majumdar, Munsif of Serajgunge, to the Secretary to the Government of Bengal, Revenue Department,—No. 116, dated Serajgunge, the 3rd August 1884 479

Letter from Baboo Bhugobutty Churn Mitter, Munsif of Mozufferpore, to the Secretary to the Government of Bengal, Revenue Department,—No. A, dated Mozufferpore, the 22nd September 1884 487

Notes on the revised Tenancy Bill, 1884, by the East Bengal Landholders' Association 489

Letter from Baboo Peary Mohun Mookerjee, Honorary Joint-Secretary, Central Committee of Landholders of Bengal and Behar, to the Secretary to the Government of Bengal, Revenue Department,—No. 84, dated Calcutta, the 12th September 1884 509

Letter from the Vice-President, Tirhoot Landholders' Association, Mozufferpore, to the Secretary to the Government of Bengal, Revenue Department,—No. 73, dated Mozufferpore, the 4th September 1884 ... 521

Letter from Baboo Ambica Churn Mazumdar, M.A., Secretary to the Furreedpore People's Association, to the Secretary to the Government of Bengal, Legislative Department,—dated Furreedpore, the 22nd August 1884 537

Letter from Baboo Gourie Sunker Roy, Honorary Secretary, Orissa Association, to the Secretary to the Government of Bengal, General Department, dated Cuttack, the 22nd September 1884 541

From John Stalkartt, Esq., to the Hon'ble Rivers Thompson, Lieutenant-Governor of Bengal, dated the 2nd June 1884 543

From John Stalkartt, Esq., to the Hon'ble Rivers Thompson, Lieutenant-Governor of Bengal, dated the 16th June 1884 547

From John Stalkartt, Esq., to the Hon'ble Rivers Thompson, Lieutenant-Governor of Bengal, dated Hope Town, the 27th June 1884 ... 551

From John Stalkartt, Esq., to the Hon'ble Rivers Thompson, Lieutenant-Governor of Bengal, dated the 25th July 1884 553

From John Stalkartt, Esq., to the Hon'ble Rivers Thompson, Lieutenant-Governor of Bengal, dated Hope Town, the 3rd November 1884 555

PAGE.

Letter from G. N. Barlow, Esq., C.S.I., Commissioner of the Bhagulpore Division and Sonthal Pergunnahs, to the Secretary to the Government of Bengal, Revenue Department,—No. 1795R, dated Bhagulpore, the 8th August 1884 557

Letter from W. Eddis, Esq., Assistant Manager, Raj Durbhunga, to the Collector of Purneah,—No. 233, dated Purneah, the 11th July 1884 559

Memorandum by A. Weekes, Esq.,—No. 640G, dated the 21st July 1884 566

Remarks of Baboo Surja Narain Singh on the revised Bengal Tenancy Bill 567

Extract from letter of Baboo Surja Narain Singh to the Commissioner of the Bhagulpore Division, dated 9th September 1880, referred to in paragraph 1 of the remarks on the Tenancy Bill 570

Extract from the memorandum on the Rent Bill by Mr. H. J. Reynolds (on special duty), page 185 of Volume I, Report of the Government of Bengal on the proposed amendment of the Law of Landlord and Tenant in that province 571

Remarks on Bengal Government circular No. 3T—R, dated 24th May 1884, by Baboo Surja Narain Singh 572

Remarks on Bengal Government circular No. 3T—R, dated 24th May 1884, by Baboo Surja Narain Singh 573

Remarks on Bengal Government circular No. 3T—R, dated 24th May 1884, by Baboo Surja Narain Singh 574

Notes on a few of the sections of the Bengal Tenancy Bill, published in the *Gazette of India* of the 5th April 1884, by James Hennessy,—dated Edinburgh, the 2nd July 1884 577

Letter from G. N. Barlow, Esq., C.S.I., Commissioner of the Bhagulpore Division and Sonthal Pergunnahs, to the Secretary to the Government of Bengal, Land Revenue Department,—No. 1848R, dated Bhagulpore, the 14th August 1884 583

Note on the Bengal Tenancy Bill by Herbert R. Reily, Esq. ... 585

Letter from Rajah Hurbullah Narayan Sinha, Bahadur, of Sonbursa, to the Private Secretary to the Lieutenant-Governor of Bengal,—dated Camp Moorligunge, the 13th July 1884 605

Letter from W. B. Hudson, Esq., General Secretary to the Behar Indigo Planters' Association, to the Secretary to the Government of Bengal, Revenue Department,—dated the 16th September 1884 615

Proceedings at a general Committee meeting held at the Planters' Club, Mozufferpore, on Saturday, the 26th July 1884 617

Proceedings at a general Committee meeting held at the Planters' Club, Mozufferpore, on Saturday, the 16th August 1884 621

Letter from H. H. Risley, Esq., Officiating Under-Secretary to the Government of Bengal, Revenue Department, to the General Secretary to the Behar Indigo Planters' Association,—No. 2072T—R, dated Darjeeling, the 29th September 1884 623

Letter from H. H. Risley, Esq., Officiating Under-Secretary to the Government of Bengal, Revenue Department, to the Secretary to the Government of India, Legislative Department,—No. 2071T—R, dated Darjeeling, the 29th September 1884 625

Letter from the Rev. John P. Ashton, Secretary of the Calcutta Missionary Conference, to the Secretary to the Government of Bengal, Legislative Department,—dated Calcutta, the 25th September 1884 627

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BENGAL TENANCY BILL, 1884.

VOL. II.

No. 784, dated Simla, the 5th May 1884.

From—D. FITZPATRICK, Esq., Secretary to the Govt. of India, Legislative Dept.,
To—The Secretary to the Government of Bengal.

I AM directed to invite your attention to the Preliminary Report (including the dissents) of the Select Committee on the Bengal Tenancy Bill and to the revised Bill, recently published in the *Gazette of India*,* and to request that the Report and the Bill may be taken into consideration by the Government of Bengal as soon as possible, in order that the Government of India may be made acquainted with the views of the Bengal Government on the revised Bill and of those officers whom the Bengal Government may consider it expedient to consult.

2. In concluding their Report, the Select Committee specify several points with which they were unable to deal adequately without further information than that contained in the papers before them. And they state that on some of these points they would be glad to receive the advice both of the Local Government and of the High Court. A separate communication will be addressed to the High Court. The particular questions which the Select Committee wish to be referred to the Local Government are:—

(1) Whether, with reference especially to landlords' improvements, it is desirable to empower Revenue officers to arrange for the cutting of irrigation channels, the distribution of water, and the payment of compensation; and, if so, what form such provisions should take?

(2) Whether the summary sale procedure can be applied to those dependent taluqs the revenue of which was settled direct with Government, though the holders pay it through the zemindar, who is responsible for its realization. These tenures apparently find no place in the Government registers, and it was proposed that the modified *patni* procedure should be applied to them.

(3) Whether the same procedure can be made applicable also to the recovery of arrears of road cess and public works cess from rent-free tenure-holders.

(4) Whether any provisions are required in the Bill with respect to tenants of homestead or *bastu* land which is not a part of an occupancy holding. The Select Committee have omitted Chapter VII of the original Bill, on the ground that it was inapplicable to the very varying conditions attaching to the holdings of such tenants in different parts of the country, and that they had not before them the information requisite to dealing with the questions involved. It is desirable that information of this description should, if possible, be supplied.

(5) Whether the saving of customary and other conditions specifically applied in section 214 of the revised Bill to *utbandi* and *hal-husili* tenures should be extended to similar tenures under other names, and whether any special saving is necessary in regard to the special tenures under which land is held in the Chittagong Division.

(6) Whether it would be possible to specify for the purpose of exemption from the pre-emption sections any such transferable occupancy rights as those in *guzashtá* and *gorá* holdings.

* See *Gazette of India* for 29th March and 5th and 12th April.

(7) Whether it is possible to improve the accuracy of the price lists which have been published during the past twelve years; and what would be the probable effect of basing a system of enhancement of rent mainly on these lists.

3. To these points the attention of the Government of Bengal is especially invited. It may be that the first of them would require separate legislation; but as they have been referred at the instance of the Select Committee, it would be desirable that the opinion of the Bengal Government upon them should be given in reply to this letter. I am further to mention some other matters on which either the opinion of the Government of Bengal is particularly required, or an expression of the views of the Government of India seems desirable.

4. The first question concerns the sufficiency of the revenue establishments of the Province to discharge, in addition to their present onerous functions, the numerous duties which, under the revised Bill, will devolve upon them. They are required, for instance—(1) to ascertain the prevailing rate by local inquiry at the instance of a Civil Court before which an enhancement suit under section 44 is brought; (2) to prepare authoritative price lists under section 52; (3) to receive deposits of rent (section 73); (4) to appoint officers to superintend the division of the produce where rent is taken by appraisement or measurement (section 82); (5) to decide the respective rights of landlord and tenant to make an improvement, or whether any particular work is an improvement (section 89); (6) to register landlords' improvements, and to record evidence respecting any improvement (sections 91 and 92); (7) to grant permission to measure the holding of a tenant (section 99); (8) to prepare a record-of-rights or to make a settlement of rents (Chapter X); (9) to frame tables-of-rates (Chapter XI); (10) to survey and record a proprietor's private lands (Chapter XII); (11) to determine the incidents of a tenancy by means of a local inquiry at the direction of a Civil Court (section 174). This list does not exhaust the duties delegated to Revenue officers; but it is sufficiently full to show that the efficient working of the Act will in a great measure depend on the ability of the revenue establishments to respond to the calls which will be made upon them. Some of the duties—as, for instance, the preparation of a record-of-rights or of a table-of-rates, or the settlement of rents—will probably arise only in exceptional localities, and may require the employment of special establishments. Others, however,—such as the registration of improvements or local inquiries into the prevailing rate,—will not improbably be frequent throughout the Province; and the Government of India would like to know whether the existing revenue establishments can cope with the work, or whether it will be necessary to strengthen them, if the Bill be passed in its present form. In connection with this subject, I am to invite the attention of His Honour the Lieutenant-Governor to paragraph 19 of the Secretary of State's despatch No. 30 of 17th August 1882, dealing with the question of introducing a system of survey and record-of-rights either generally into Bengal or experimentally into the Patna Division. The Government of India is anxious that a complete statement of the Lieutenant-Governor's views and proposals on this subject, and as to the necessity of providing further legislative facilities for it beyond those which are given in the Bill under consideration, should be submitted.

5. Passing from this general question of administrative machinery to the most important alterations made by the Select Committee in the Bill as originally introduced, I am to notice the following points.

6. *Tenure-holders* (*Chapter III*).—The description of tenure-holders and raiyats, which is given in Chapter II in place of a definition, is believed to represent substantially the views expressed by the Government of Bengal in its letter No. 972 of 27th September last, although it was not deemed expedient to draw the line between the two classes of tenancies with the precision and definiteness which was there recommended. The Bill, it is understood, requires the Courts, in deciding whether a tenant is a tenure-holder or a raiyat, to look in the first instance to the primary object for which the tenancy was acquired,—whether for collecting rent, or for cultivating the land,—and in doubtful cases directs their attention to local custom. But in case these issues cannot be adequately ascertained, it provides a presumption, which is doubtless in accordance with existing facts, that holdings exceeding 100 bigahs were taken for the former purpose. The

Government of India will be glad to learn if these provisions will afford reasonable facilities for meeting what is clearly felt to be a grave practical difficulty in deciding what holdings are, and what are not, tenures. The most doubtful feature of the scheme is the proposed conversion of occupancy raiyats, who sub-let more than one-half their holdings, subject to certain exceptions, into tenure-holders (section 37). The object is to bring the sub-letting raiyat under the more summary sale procedure of Chapter XVI, and at the same time to allow the sub-tenant to acquire occupancy rights. The Report of the Select Committee in its comments on Chapter V discusses these provisions at some length, and touches on the practical difficulties which may be anticipated to arise. To these remarks the attention of the Government of Bengal is invited. It will be noticed that the converted tenure-holder still remains liable to enhancement of rent as an occupancy raiyat, though in other respects he acquires the rights and liabilities of a tenure-holder, and is in some ways, especially as to pre-emption and distraint, in a better position than if he had never sub-let. The expediency of giving these privileges as part of a scheme for discouraging sub-letting and the general effect of this distinction should be considered; and it would be well if local inquiries were made as to the practicability of the scheme, and as to the possibility of giving effect to it by means of a system of registration as contemplated by the Bill. The obvious objections, that it is difficult to ascertain if a man has sub-let half his holding, and that it may be neither to his own interest, nor to that of anyone having a knowledge of the facts, that he should be registered, require to be carefully weighed and, if possible, overcome.

7. *Raiyats holding at fixed rates* (*Chapter IV*).—The assimilation of this class of raiyats to tenure-holders with respect to transfer and succession is a provision about which the Select Committee were not unanimous. It has been urged that, while these conditions may very fairly be allowed to raiyats holding at fixed rates under a registered lease or under a judicially declared title, they should not be claimable by raiyats whose right to hold at fixed rates rests only on the statutory presumption. It was the opinion of the Select Committee that no distinction can be drawn in the Bill between these two classes; but it is open to consideration whether some further restriction might not equitably be placed on the twenty years' presumption, in addition to that proposed in the proviso to sub-section (2) of section 64 and in section 122. The Government of India is disposed to think that, subject to restrictions, the presumption should be retained. The presumption was originally enacted in Act X of 1859, in order to facilitate the proof of certain well-recognized rights. To remove it entirely from the Statute-book would throw on the tenant claiming to be a fixed-rate tenant the burden of proving that he had held at the same rent from the time of the Permanent Settlement; and this, in the absence of public and authoritative registers of tenancies, would be equivalent to an absolute bar to every claim of this nature. Other proposals have now been made with a view of limiting the currency of this presumption: they are (1) to provide facilities for registering such tenancies and for deciding the disputed claims to which registration is certain to give rise, and to prescribe that no tenant whose title to hold at fixed rates is unregistered after a certain date, to be fixed by the Act, can claim the benefit of the presumption; or (2) to enact that the presumption shall not continue to run after the passing of the Act, or after some subsequent date, so that the raiyat claiming to hold at fixed rates must, in order to have the benefit of his presumption, be prepared to show that for twenty years previous to the date thus fixed (instead of previous to the date of institution of the proceedings) he has held at an unchanged rate. The attention of the Government of Bengal is requested to these suggestions, as there cannot be a doubt but that the presumption being cumulative every year renders it less in accordance with the real facts, and also increases the landlord's difficulty of rebutting it.

8. *Occupancy raiyats* (*Chapter V*).—A preliminary question is raised by the Select Committee as to the definition of "estate" with reference to exceptionally large estates, such as those of the Maharaja of Burdwan. The Select Committee also invite attention to the date provisionally given in section 27(*b*). These points should now be considered by the Government of Bengal.

9. The Select Committee also remark that the main lines of the original Bill in regard to the acquisition of the status of a settled raiyat and the right of

occupancy have been retained, while considerable alterations have been made in the provisions relating to the enhancement of the rent of occupancy raiyats. The whole of this chapter will, no doubt, be fully considered by the Government of Bengal, and the effect of the minor amendments introduced into it should receive careful attention. The presumption introduced in section 26, sub-section (2), is, it is believed, quite in accordance with existing facts. It has been said by a leading opponent of the Bill that 90 per cent. of the raiyats of Bengal have occupancy rights: the practical difficulty, however, has always been for them to prove these rights. The object of the presumption is to facilitate this proof by throwing the *onus probandi* on the party asserting the case to be an exception from the general rule. From this point of view, the Government of India accepts it as an improvement of the Bill. Other important features in the early portion of the chapter are the sub-divisions entitled "Restrictions on transfer" and "Restrictions on sub-letting," and the omission of section 56 of the original Bill, which conferred a right of occupancy on a raiyat let into an occupancy holding after it had been bought up by the landlord. Of these, the restrictions on sub-letting have already to some extent been discussed. It is understood that the universality of the practice both in Behar and in Bengal rendered the prohibition of the practice impossible; and, as the Committee point out, the attempt to place restrictions upon it has been attended with extreme difficulty. It is not probable that any satisfactory solution of the problem can be found in the direction of increased stringency. The provisions of section 56 were very generally condemned in the papers before the Select Committee. The Government of India concurs in the omission of this section from the Bill, though it is obvious that the absence of such a restriction may have the effect of enabling the more wealthy landlords to diminish by purchase the area held by tenants in occupancy right, and may also afford a means of raising the customary or prevailing rate of rent over the occupancy area. The former advantage, however, will only remain to the landlord as long as he retains the land in his own cultivation. If he lets it, the ordinary provisions as to the acquisition of occupancy rights will apply to the incoming tenant; and it is believed that these will be found sufficiently broad for all practical purposes. The possible effect of the omission of the section on the prevailing rate is, no doubt, a more serious consideration. The landlord who buys up the occupancy right in a holding may either let the land to a non-occupancy raiyat at any rent he likes (section 56), or to a settled raiyat, subject (*see* section 42) to such enhancement on the rent paid by the late occupancy raiyat as is permissible under section 41. Should this power be extensively exercised on an estate where the competition for land is keen, the higher rents obtainable for such land by the landlord would eventually tell on the prevailing rent, and would enable the landlord to enhance the rents of the general body of occupancy tenants on the ground that they were below the prevailing rate of rent. The Government of India is, therefore, prepared to admit that the omission of section 56 may occasionally operate unfavourably towards the occupancy-raiyat by allowing in certain cases (especially in connection with the effect of section 42 on an occupancy raiyat succeeding to the tenure of a non-occupancy raiyat) room for the entry of competition rents. But, admitting this, the Government of India cannot but recognise the force of the objections which were brought against that section of the original Bill from the opposite point of view, and is disposed to think that justice to the landlords required the modification of the Bill in this particular. Your attention, however, will be more specially directed to the effect of section 42 in a subsequent portion of this letter. The only remaining restriction which affects the acquisition of occupancy rights by the landlords is that in section 28, which declares that the occupancy right so acquired merges in the superior right of the landlord. It allows the accrual of occupancy rights by the lapse of time to the new tenant, prevents the legal complications which would arise from the co-existence of different interests in the same person, and merely affirms what appears to have been assumed by the Judicial Committee of the Privy Council, in the case referred to in Mr. Justice Field's note on this subject, to be the existing law. The section, it will be noticed, applies whether the landlord is the zemindar or a tenure-holder.

10. The alterations made in the law of enhancement in the latter portion of Chapter V are set out in detail in the Report of the Select Committee, and

the Government of India will only direct attention to one or two points. The omission of the section limiting money-rents to a maximum of one-fifth of the gross produce may perhaps give rise to some misgivings, and it may be said that with this section the only absolute check on rack-renting has been removed. On the other hand, may objections have from the first been taken to this provision of the original Bill. It has been condemned as setting up a maximum rate of rent, which might possibly be suitable in a particular locality in regard to particular crops, but which would certainly work inequitably as a uniform standard for all classes of crops and in all districts. Thus in the poorest lands it might leave an insufficient margin for the subsistence of the cultivator, whilst on the best lands it might give him more than he is entitled to get. It has also been condemned as likely to encourage enhancements of rent in all cases in which the rent was below the legal maximum. It has been further condemned as economically vicious, because it leaves out of view the enormously important element of costs of cultivation; and, again, because it professes to lay down as a permanent standard of the maximum rent a proportion of the gross produce which circumstances, such as the increasing pressure of the population, may make it difficult to maintain. But the most serious objections lay in the notorious difficulty of ascertaining by the agency at the disposal of the Courts either the average produce of different classes of land, or the produce of the particular fields of which the rent was in question; and this latter difficulty is greatly increased by the provision that the average gross produce of the field was to be calculated in staple crops, whatever might be the special crop grown on the land in question. The problem has been repeatedly attacked by experts in connection with the land assessment of temporarily settled provinces; and the results of their elaborate inquiries have been so conflicting and of so little practical value that the Government of India will not contest the expediency of omitting the gross produce test from the law of enhancement in Bengal. In the Bombay Presidency experiments have for years past been made by Revenue officers with the view of ascertaining the proportion borne by the land assessment to the gross produce. The report of the Director of Agriculture on the experiments for 1882-83 has recently been communicated to the Government of Bengal: it should be referred to as well illustrating the difficulty of the inquiry, and the impossibility of establishing any certain relation between the produce and the rent or revenue. First of all, the produce of particular fields has to be ascertained by actual experiment. Then inquiry has to be made whether the produce is exceptionally large owing to the exceptional character of the cultivation, or exceptionally small owing to previous cropping or accidents of weather. Then comes a difficult inquiry into the prices obtained by the cultivator and the value of the produce. At every stage there is room for much difference of opinion; and the data obtained from the several experiments are too conflicting to lead to any certain conclusion as to the average value of the produce of different classes of land. The same difficulty was felt in the case of the Khurda Settlement, which was recently referred for the orders of the Government of India by the Government of Bengal. The Settlement officer of Khurda was certain that his assessment took less than one-fourth of the value of the gross produce; but his estimate, and the data on which it was founded, were considered of doubtful accuracy by the Government of Bengal. But even if average standards of produce could be ascertained, the fact remains that rent bears no fixed relation to the gross produce. The cost of cultivation is quite as important a factor as the gross produce; and if one fact is clearly brought out by inquiry, it is the impossibility of ascertaining the cost of cultivation with any degree of accuracy.

11. These are some of the considerations which have led the Government of India to agree with the Select Committee that the gross produce test should be abandoned. The Government of India is also inclined to agree with the Select Committee that, failing this test, the most feasible check on rack-renting is to limit the percentage of increase obtainable at any one time on existing rents when rent is enhanced either by private agreement or by suit. There is an additional reason for fixing a limit on the percentage of increase; and this is that, whatever the land can afford to pay, it is certain that, under existing circumstances in India, the ordinary raiyat cannot bear a very large and sudden increase in his rent without the risk of a material deterioration of his agricultural

stock and means of living. Great importance is attached by the Government of India to this consideration, in connection with periodical re-assessments of land revenue. The propriety of the several percentage limits of enhancement specified in the revised Bill, and also the other incidents which the Bill attaches to agreements out of Court to pay a higher rent, are points which may profitably be considered by the Government of Bengal. In other provinces an increase of 25 per cent. in the course of 30 years' settlement is at the present day looked upon as considerable. The Bill allows what is equivalent to 50 per cent. in this term in most cases, and in some circumstances as much as 100 per cent.

12. Before leaving this subject, I am to invite attention to the provisions of section 42. Fears have been expressed lest the rule under which an occupancy raiyat let into land hitherto held by a non-occupancy tenant has to pay the same or even under contract an enhanced rent, may have an extensive effect in the direction of raising the prevailing rate of occupancy raiyats. The landlord, as noticed in paragraph 9, may, on acquiring an occupancy holding, re-let it to a non-occupancy tenant at a competition rent. And should it again fall vacant, any occupancy tenant of the estate, who may then be let in by the landlord, will be bound to pay this rent. The tendency of these provisions to raise the prevailing rate has been urged by Mr. Reynolds in his dissent, and His Excellency in Council would be glad to receive an expression of the Lieutenant-Governor's opinion as to whether the anticipated danger is not such as to require some safeguard, and, should this be the case, in what way it might best be met.

13. The effect of the alterations which have been made in the grounds on which an enhancement suit can be brought should also receive close attention. The most important points are—(*a*) The restriction of enhancement on the ground of increased productivity to the two separate cases of fluvial action and landlords' improvements; (*b*) the method proposed for determining enhancements on the ground of a rise in prices. In regard to (*a*), it should be considered whether the scheme for registering landlords' improvements which the Bill provides (sections 91-92) is sufficient for the purpose, and whether there are any other cases besides the two specified in the Bill in which enhancement should be allowed on the ground of an increase in the productive powers of the soil. The Government of India is disposed to agree with the Select Committee that this ground of enhancement will be difficult to work, except in the special case of landlords' improvements, in respect to which the requisite information can, to some extent, be obtained by means of registration. In regard to (*b*), the explanatory remarks of the Select Committee should be considered. Their intention is that authoritative price lists of staple food-crops should be prepared by the Local Government, and that in deciding an enhancement suit on the ground of an increase in prices the Courts should have regard to these lists as indicating a general rise or fall in prices in any local area without any reference to the particular crop grown on the land the rent of which is in dispute. When a general rise has thus been ascertained, it would rest with the tenant to prove any particular causes which may have prevented him from enjoying the full benefit of the rise. The general tendency of these provisions would be that, so far as this particular ground of enhancement is concerned, the standard of rent as expressed in grain would not vary, but the landlord would be protected from the loss now arising from the diminished purchasing power of silver in relation to grain. The Government of India agrees with the Select Committee that these proposals would very materially facilitate the decision of this class of enhancement cases, and considers also that the zemindars are entitled to some substantial improvement in the procedure for obtaining enhancements of rent in such cases. In many parts of Bengal the rise in prices of recent years has been very considerable, and the complaints of the zemindars that under the present law they have been unable to obtain a proportionate increase of rent are admitted to be well founded. If the present proposals of the Select Committee are calculated to work equitably, the Government of India would be glad to see them enacted, as they go far to redeem the promises which have been made at various times to the zemindars. They are, however, not free from difficulties and objections, some of which may here be indicated. The first difficulty will occur in the selection of the staple crop or staple crops for each district, and on this point the opinion of the Government of Bengal and its local officers is very desirable. Is it possible to

select in each district one or more staples which are so generally cultivated as to be fairly indicative of the agriculture of the tract? The Select Committee have restricted the staples to food-crops; the objection to the inclusion of other staples, such as jute and indigo, being that they are grown for export in place of food-crops, and are subject to such great fluctuations in prices as to afford no reasonably stable standard of comparison. If staple crops can be selected, it will then be necessary to ascertain whether trustworthy price lists for past years exist or can be now prepared, and what arrangements are possible in the future. Assuming that these points can be satisfactorily settled, the practical effect of the proposed method of enhancement should be considered. Is it safe to presume, in the absence of evidence to the contrary, that because the price of the staple crop of a district has increased in that district by 20 or 30 per cent., the gross value of the crops produced on any particular holding has increased in the same proportion? And, if this inference be fair, is it further permissible to assume that the rent may be enhanced in exact proportion to the rise in prices, or should some deduction be made to cover the increased cost of production? An increase in prices, again, may possibly be due to temporary or local causes, as, for instance, recurring bad harvests in the tract itself or in adjoining tracts. Can the price lists be made to distinguish the permanent from the temporary rise in prices, and the occasions when the tract has benefited from the rise from those when it has suffered, or must this be left to the discretion of the Courts? Lastly, is the fluctuation of prices recorded at the head-quarters of a district or a sub-division a true index to the fluctuations which attend prices obtained by the cultivator in his village? These are some of the questions which require to be considered in connection with the scheme. They point to the impracticability of devising any method of enhancement that can be worked in a purely mechanical way. And this the Bill admits by the provision requiring the Courts not to decree any enhancement which is unfair or inequitable. The question, therefore, which the Government of India would have the Government of Bengal consider is whether this provision is sufficient to guide the Courts in applying the price lists in enhancement suits, or whether any other considerations to which the Courts ought to have regard should be more definitely stated in the Bill.

14. The provisions for commuting grain-rents to money-rents also demand attention. In regard to the method of commutation, it would probably be desirable that the officer should ordinarily look to the analogy afforded by the prevailing money-rents for similar land, but that the result should be checked by the average rent which the landlord has hitherto received—in other words, by the test of experience. If the latter alone were to be regarded, it is obvious that, as Mr. Reynolds points out, a deduction should be made for the risks and other burthens which the tenant assumes in undertaking a money-rent; but if the prevailing money-rent is taken as the primary guide, these risks and burthens will *ex hypothesi* have been ordinarily discounted. The provisions, therefore, seem to the Government of India to be fair and equitable; but His Excellency in Council will be glad to receive the Lieutenant-Governor's views on the point.

15. *Non-occupancy raiyats* (*Chapter VI*).—The point on which most difficulty will be felt as regards this class of raiyats is the omission from the Bill of all restrictions on the rent which a landlord may demand from the raiyat on his first entry upon a holding. The Government of India, as already said, agrees with the Select Committee as to the necessity for abandoning a maximum rate of rent fixed in terms of the gross produce, and is inclined also to think that the Bill goes sufficiently far in protecting the non-occupancy raiyat during the period in which he is acquiring rights of occupancy. The great safeguard for raiyats of this class will lie in the broad basis on which the occupancy right is constituted by the Bill, and in view of this the Government of India would be prepared to accept the proposals of the Select Committee. But before coming to a final conclusion on the matter it would be glad to learn the views of the Government of Bengal. The Government of India accepts the proposal of the Committee to give the non-occupancy raiyat, when enhancement is demanded, a five years' lease at a judicial rent as a substitute for compensation for disturbance. This provision also serves to some extent to secure the object of the abandoned maximum based on a proportion of the gross produce, and affords the non-occupancy

raiyat a better chance of acquiring occupancy rights under the 12 years' rule; though, as he remains liable to ejectment at the end of the five years' term, it gives the landlord the opportunity of getting rid of a bad tenant if he chooses.

16. The Lieutenant-Governor's opinion as to the sufficiency of the protection given to under-raiyats in Chapter VII is also requested. It will be remembered that when an occupancy raiyat by sub-letting becomes a statutory tenure-holder, his immediate tenants become raiyats, and this chapter thereupon ceases to apply to them.

17. *General provisions as to rent (Chapter VIII).*—The only alteration in this chapter to which the Government of India would specially direct attention is the definition in section 83 of the respective rights and liabilities of landlord and tenant as to the possession of the crop where rent is taken by appraisement or division of the produce. It should be ascertained whether this definition is exhaustive, and whether it conforms to practice and custom. The opinion of local officers, especially in South Behar, would be valuable as to the sufficiency of the provisions (sections 81-83) which deal generally with produce-rents.

18. *Miscellaneous provisions as to landlords and tenants (Chapter IX).*—The registration procedure in respect to landlords' improvements, which this chapter provides, has already been noticed, and another point to which attention is invited is the manner in which the Select Committee have attempted to solve the very difficult question of abandonment by a tenant. The Government of India is disposed to accept the section (section 96) as the fairest way of dealing with the conflicting interests of landlord and tenant in such cases. The Lieutenant-Governor's opinion is further invited to the provision of section 101 (standards of measurement) and to the criticisms of the dissentient members of the Committee on the sections relating to the appointment of managers. The chief objections taken to the sections last mentioned are that the law which they are intended to re-enact is practically obsolete, and that they are unnecessary in the present state of society. On the other hand, the Government of India observes that these provisions were very generally approved by the District officers who reported on the original Bill.

19. *Record-of-rights and settlement of rents (Chapter X).*—In this chapter the first point which should be considered is whether the powers conferred or conferable on the Revenue officer charged with the preparation of the record-of-rights are sufficient for the purpose in view. The Revenue officer must have authority to compel parties to attend to give evidence, to point out boundaries, and to otherwise assist him in his inquiries. He must also have power to enter upon, survey, and demarcate land, and to examine its character and productive powers. Under section 223 the Local Government is competent to confer certain powers on Revenue officers, and these will probably be sufficient for the purpose, but it would be well if the provisions of the Bill in this respect were carefully examined by an officer versed in settlement procedure. It should also be considered whether the particulars to be included in the record are stated with sufficient fullness in section 111. As the enumeration there given is not exhaustive, the Local Government in issuing an order under the section would be able, if necessary, to add to or vary it. If, however, there is any obvious omission, it might be well to correct it.

20. The second question concerns the important change which has been introduced into the procedure for framing the record-of-rights. All undisputed entries will simply be presumed to be correct in any future proceeding between the parties until the contrary is proved. Disputed entries will be decided by the Revenue officer according to the regular procedure of a Civil Court, and his decision will have the force of a decree. As regards the undisputed entries, the Government of India agrees with the Select Committee as to the undesirability of attaching more than a disputable presumption to them. As to disputed entries, however, the Government of Bengal should consider whether the Revenue officer is capable of disposing in the manner provided of every class of case which may arise, or whether he should have the power to refer any class of special difficulty or importance to the ordinary Civil Courts. It should also be considered how the proposed appointment of a special Judge or special Judges to hear appeals from the Revenue officer is likely to work in practice, especially where the paucity of such cases would render it undesirable to appoint a separate officer for the work. The Government of India would

like to have some indication of the way in which the Government of Bengal would propose to give effect to this provision. The Select Committee evidently contemplate that the special Judge or Judges should be familiar with the local agricultural system, and should also be judicially qualified for the office. And the point for the Local Government to consider is whether these requirement can be adequately satisfied.

21. Passing now to the sub-chapter *Settlement of Rents*, the Government of India would invite attention to three points:—(1) The appellate procedure as described in the report of the Select Committee; (2) the restriction of the Settlement officer's powers in regard to the alteration of existing rents; (3) the prohibition of enhancement suits for a term of 15 years after the preparation of the rent-roll. As regards the first point, the Government of India will not add anything to the remarks of the Select Committee, but would like to have the opinion of the Government of Bengal on the proposal. As regards the second and third points, it will be noticed that the Settlement officer will exercise no powers with respect to the rents of non-occupancy tenants or of sub-tenants beyond recording existing facts: with respect to the rents of occupancy tenants and tenure-holders, his powers are similarly restricted, unless an application that the rent should be altered is made by either landlord or tenant. But whether any alteration is made or not in the rent of an occupancy tenant or tenure-holder, the rent recorded by the Settlement officer is not to be enhanced during a term of 15 years, except on the ground of a landlord's improvement or of an alteration in the area of the holding. This provision has been objected to from the landlords' point of view, and its equitableness should be carefully considered. The obvious advantage of the provision is that it secures the settlement of rents throughout the area by a specially qualified officer with special facilities for dealing with this class of cases; and it can be defended on the ground that, as the landlord is given the opportunity of enhancing by means of a special Court the rent of any occupancy holding which seems to be held at an unduly low rent, he may be trusted to avail himself of this power, and all rents which he is content to leave as they are may be presumed to be adequate, and as such suitable to be confirmed for a term of years. On the other hand, one of the objections taken is that litigation is stimulated and enhancement suits forced on, which the landlord would otherwise have been willing to postpone. That there is some force in this must be admitted; but looking to the fact that a settlement of rents will not be undertaken unless the relations between landlord and tenant are unsatisfactory and litigation is impending, the Government of India is disposed to accept the proposals of the Select Committee as, on the whole, most favourable to the true interests of both parties. It may be well to notice that, as the Settlement officer will have no power to alter the rents of non-occupancy tenants, the ordinary provisions of Chapter VI as to enhancement will continue to apply to them, notwithstanding a settlement of the rents of the occupancy tenants. Your attention has already been called in paragraph 4 to the Secretary of State's remarks regarding the general introduction of a survey and record-of-rights, and the Government of India would be glad to learn in what way and to what sort of areas the Lieutenant-Governor thinks it would be expedient to apply the procedure which the Bill provides for making records-of-rights and settlement of rents.

22. *Tables of rates (Chapter XI).*—The Select Committee have explained that, though the procedure under this chapter, with only a few minor alterations, has been retained, its use will probably be confined to special tracts, and it is no longer so important a future in the Bill as it was in the original draft. The practical utility of the table in any tract is the question which the Government of India would now like the Government of Bengal to consider. Assuming that it is found possible for a Revenue officer to frame rates of rent for different classes of land, and that these rates are on the whole equitable, it is certain that if the land can be brought under the right class, the procedure of the Courts will be very greatly facilitated; but there still remains the difficulty that the Civil Court may often have to ascertain by local inquiry to what class or classes of land the holding belongs when a suit to enhance the rent is instituted under section 134. If the land is of fairly even quality, or falls into clearly marked classes, there may be no room for a dispute on this point. But if this is not the case, and the tenant contests the landlord's classification, the local

inquiry might be charged with delicate questions of land valuation, and it is no disparagement of the Civil Courts to say that they have rarely at their command subordinate agents capable of discharging those duties satisfactorily. These difficulties are by no means conclusive as to the inutility of the table-of-rates, but they seem to deserve consideration.

23. *Record of proprietors' private lands* (*Chapter XII*).—With this chapter should be read section 30, which in its restriction of the accrual of occupancy rights in this class of lands is understood to be in literal conformity with the existing law. The combined description and definition of this class of lands which the Select Committee have substituted for the definition in the Bill will so far meet the landlords' objections in that they allow greater weight to be attached to local custom by the Court or officer engaged in determining what are private lands. The assumptiom also that all land must be either *khamar* or *raiyati* has been excluded from the Bill. The Government of India is disposed to accept the Select Committee's solution of a very difficult question. It will be noticed that by section 30 the acquisition of occupancy rights in land recorded as *khamar* or *zeraat* is not prevented when the tenant holds otherwise than on a lease for a term of years, or on a lease from year to year.

24. *Distraint* (*Chapter XIII*).—The Select Committee have substantially retained the provisions of the original Bill, with the minor alterations specified in their report. They have not, on the one hand, seen their way to reverting to the procedure of the present law as advocated by the landlords, nor have they accepted the suggestion of the Government of Bengal to abolish distraint altogether with respect to occupancy raiyats, while retaining it in its present form (though with sharper penalties in the case of abuse) for non-occupancy and *korfa* raiyats. The Government of India is satisfied that, if distraint is to be maintained at all, the process can no longer be left to the unsupervised action of the zemindars' servants, and the reference to the Courts is an essential safeguard. It would be well, however, for the Government of Bengal to examine what foundation there is for the criticism that the delay caused by obtaining the aid of the Court before the first step to distrain can be taken must deprive the process of its utility. In considering this point the effect of the new provision, enabling an *interim* order to be issued by the Court [section 141 (3)], should not be overlooked. As regards the former proposal to abolish distraint in the case of occupancy tenants, the Government of India is inclined to doubt the universal correctness of the argument that in the saleability of the occupancy right the landlord has perfect security for his rent. The occupancy right must vary greatly in value in different districts; and where the population is sparse and land abundant, it may very possibly be unsaleable. It would seem, therefore, that the process of distraint should apply to both classes of raiyats. It has, moreover, been suggested that in the case of an improvident peasantry a remedy against the crop may be a more humane process than the remedy against the land. For these reasons the Government of India would be willing to consider any suggestions for still further improving or cheapening the procedure adopted by the Select Committee, and, with reference to the doubts above expressed as to the effects of delay, commends the question specially to the consideration of the Government of Bengal.

25. *Judicial procedure* (*Chapter XIV*).—The several questions in connection with this chapter on which the Select Committee specially desire to have the advice of the Bengal Government have already been noticed. The specific proposal put forward by the zemindars with the view of shortening the procedure in rent suits was that a landlord should be permitted to institute a collective suit against any number of tenants belonging to one village by means of a single plaint. The advantages claimed for this procedure appear to be—(1) The reduction in the stamp duty and possibly in pleader's fees; (2) the possible reduction of process fees, as the notices could be served by one process-server on the same date on all the defendants, and possibly also on the plaintiff's witnesses; (3) the hearing of the cases on the same date. It is obvious that all advantage from this procedure ceases from the appearance of the parties in Court. Each case would have to be heard separately, and would require a separate decree and separate execution process. The merits of the scheme are thus very limited; but as the zemindars have laid much stress on it, the

Government of India would like it to be carefully considered by the Government of Bengal. It may, however, be observed that the advantages claimed for the scheme might, to a great extent, be obtained by executive orders under the existing law. The stamp duty on rent suits might, for instance, be reduced, and a lower scale of fees prescribed for processes issued on the same day on persons residing in the same village. It must, however, be borne in mind that any proposal to reduce court-fees, either generally or in rent suits, cannot be considered with exclusive reference to Bengal.

26. The possibility of facilitating the service of the summons might also be considered, and the Government of India, as already mentioned, proposes to ask the advice of the High Court on this chapter. But it will gladly welcome any suggestions which local officers may offer for attaining the object of a speedier and cheaper method of recovering arrears, provided always that it does not jeopardize the raiyat's right to have his case fully heard, and that it does not require him to pay money into Court before his liability to pay is established. The Committee aim at securing an important and very necessary reform by the provision of section 164. It is desirable to know if in the opinion of local officers the section is sufficient to fulfil this purpose.

27. By Chapter XVI the method of summary sale is made applicable to tenures other than *patni* tenures which may hereafter be registered. It is expedient that no time should be lost in considering this scheme for registering tenures, so that, if it be found feasible, it may be introduced into the Bengal Council at an early date.

28. The remaining chapters of the Bill, though they require to be carefully examined by the Government of Bengal, do not call for detailed remark in this letter. There is one point, however, in Chapter XVII (*contract and custom*) to which reference may be made. By section 210 (*b*) a raiyat is prevented from contracting himself out of the incidents of the occupancy right specified in section 31, and among these incidents is the right of transfer. The Government of India has refrained from re-opening in this letter the much-discussed question of the expediency of conferring the right of transfer on the occupancy raiyat. The question was fully considered by the Government of Bengal in its letter of the 27th September, and the Select Committee have adopted the view there set forth. It has, however, been urged by the zemindars that the raiyat might at least be given the power of contracting himself out of this right, and that by means of such a provision a landlord could prevent the acquisition of occupancy holdings by money-lenders and speculative land-jobbers. Such a provision is open to numerous objections, but the suggestion, as well as the similar suggestion that a raiyat should be allowed to contract himself out of the right to sub-let, may be brought to the notice of His Honour the Lieutenant-Governor.

29. In conclusion, I am to request that the reply to this letter may be so sent as to reach this Government not later than the end of August.

Circular No. 3T—R, dated Darjeeling, the 24th May 1884.

From—A. P. MacDonnell, Esq., Offg. Secy. to the Govt. of Bengal, Reve. Dept.,
To—All Commissioners of Divisions.

Your attention has already been invited to the Tenancy Bill as revised by the Select Committee of the Legislative Council of the Governor-General; to the report of the Select Committee upon the Bill, with the dissents from that Report which were published in the *Calcutta Gazette* of the 2nd of April and subsequent dates; and to the important letter of the Government of India, No. 784, dated 5th May, which appeared in the *Gazette of India* of the 10th instant. The Lieutenant-Governor again requests your most careful attention to these documents, especially to the letter of the 5th May, in which His Excellency the Governor-General in Council subjects several provisions of the Bill to examination, pointing out, in regard to some, the necessity that exists for a further discussion of their tendency and usefulness, and in regard to others the desirability of collecting more complete information. All those points, as well as other matters to be brought to your notice in the course of this letter, should now, without any loss of time, receive careful consideration from yourself, from the District Officers subordinate to you, and from such public bodies and individuals interested in the measure as may be willing and able to give assistance and advice. It will be found that on a few points local enquiries will be necessary in order to clear away the remnants of those difficulties which, at the outset, beset this question of the amendment of the Rent Law in Bengal. Those points have been generally indicated by the Government of India in their letter, and in the sequel I am to touch upon them also. Before doing so, however, I am to say, with reference to procedure, that when the matters on which further enquiry is needed shall have been duly investigated, and when your District Officers, having taken such advice as may be necessary, or may be tendered by persons interested in the measure, shall have formed their conclusions on the matters referred for their opinion, then it is the Lieutenant-Governor's wish that you should hold a conference of all your Collectors and such other officers as you may desire to consult, that you should thoroughly discuss the matters referred to you in personal communication with them, and draw up a report embodying the general opinion of the conference. From this intercommunication of ideas, the Lieutenant-Governor anticipates not only much benefit as far as the consideration of the question itself is concerned, but also a great lightening of the work of Government in reviewing the reports to be submitted. Many views, to which officers reporting separately on the Bill might be inclined to attach undue importance, assume their proper position when examined in the light of the larger experience which many men can bring to bear upon the opinions of one. If, indeed, there be marked differences of opinion, the dissentient officers should note briefly their views, but there should be no unnecessary delay in this respect, for it is expected that your report should reach this office certainly not later than the 14th August. The time allowed by the Government of India for this further discussion of the Tenancy Bill is not long, and therefore should be turned to the best account.

2. The procedure which the Lieutenant-Governor has now indicated seems to him to hold out most promise of successful results; and therefore he desires that it may be followed. In any case where a Collector of a district is unable for any reason to attend the conference, he should submit a report, which should be embodied in the General Report of the Conference, as far as the views expressed in it will permit. Mr. Rivers Thompson does not lose sight of the fact that this call comes upon District Officers at a very inconvenient time of the year, when they are busy preparing their Annual Reports. The call, which the Lieutenant-Governor trusts may be the last he will have to make in connection with the Tenancy Bill, must, however, be met; and in order to enable you to meet it, he, as a special exception, postpones the date of the submission of the Annual Reports for one month, if such an extension be necessary in consequence of the orders now issued. It is presumed that in the case of your Collectors, whose reports are due by 1st June, no extension will be needed; but, where needed, you may grant it. Having thus sketched out the plan of enquiry and consultation which seems to the Lieutenant-Governor to offer the greatest promise of satisfactory results

within the time at the disposal of the Government, I am now to direct your attention to the principal points which are to form the subject of enquiry and report. In doing this, it will be convenient to follow the order of the revised Bill, reserving for subsequent comment those large administrative questions which the Government of India raise in the initial paragraphs of their letter under notice.

3. *Chapter I.*—On this chapter the Government of India, following the Report of the Select Committee, make no remarks. No points occur to the Lieutenant-Governor to which your attention need be drawn. Should, however, any considerations of importance, which have not been provided for, occur to you in connection with this chapter, you are at liberty to bring them to notice.

4. *Chapter II.*—The provisions of this chapter exercise a very important influence on the character of the Bill, and therefore demand your special attention. It is highly desirable that a forecast should, as far as possible, be made of their probable effect by ascertaining how far similar arrangements already exist in the agrarian economy of the various districts, what the general effect of such arrangements has been, and, where no such arrangements exist, what the effect of introducing them would probably be. The chief points to which your attention should be directed are (*a*) whether the definition of ryot in section 5 (3) covers all classes of ryots, those holding under unregistered lakhirajdars as well as under the holders of revenue-paying lands; (*b*) whether the presumption in section 5 (5) is, with reference to existing practice, a fair presumption, and, if not fair, what presumption of the sort would be fair; (*c*) whether the conversion of the subletting occupancy ryot into a tenure-holder (section 37) is a workable provision, and also likely to secure the objects for which it was devised. In regard to the first and second points, the Lieutenant-Governor deems it unnecessary to do more here than to bring them prominently to your notice; but in regard to the third point (*c*), which may, with advantage, be once for all discussed in this connection, a few further remarks are desirable, because the excision of this provision would naturally exercise an important influence on some other provisions contained in the Bill. In proposing in my letter No. 972 of 27th September (paragraph 7) that an occupancy ryot who sublets half his holding should be converted into a tenure-holder, the Lieutenant-Governor had in view the twofold object of discouraging the purchase of occupancy holdings by money-lenders or speculators; and, where transfers were made, of affording a protection from undue enhancement of rents to, and of facilitating the acquisition of the occupancy right by, actual cultivators of the soil. It is recognized that the formal recognition by the Bill of the transferability of occupancy rights may tend to the purchase of such rights by money lenders (whom it is not the wish or object of the Government to benefit at the ryot's expense), and consequently to the rack-renting of the cultivators holding under such purchasers. From the earliest discussions of the question it has been accepted that if by any definition or legal provision the limitation of the occupancy right to actual cultivators could be secured, most, if not all, of the objections to the proposal would be removed. But the difficulties in the way of providing any efficient or practical limitation of the sort have hitherto proved insuperable, and it is therefore acknowledged that if the right of free sale as regards the occupancy tenure is to be maintained, some safeguard must be found against the dangers referred to. Accordingly the plan embodied in section 37 of the revised Bill was devised. The object of that plan was to deter money-lenders from purchasing occupancy rights by exposing them to being summarily dealt with for arrears of their own rents, while curtailing their power to deal summarily with their under-ryots. These objects it was proposed to secure by, on the one hand, enabling the superior landlord, in certain cases, to subject the purchaser of the occupancy right (who had sublet half the holding, and thereby rid himself of the responsibility of cultivation) to the summary procedure of the putni sale law, or to some modification of it; and, on the other hand, by raising the actual cultivator or sub-lessee from the position of a *khorfa* to that of a non-occupancy ryot, capable in course of time of acquiring the occupancy right. It was not overlooked that this plan,

even if completely successful in practice, would not to be a perfect preventive against the evils at which it was aimed: but it was believed that it would have a wholesome effect by bringing from above and from below influences to bear upon the speculative purchaser which would depreciate the value of the occupancy holding in his eyes, and thus deter him from seeking such investment for his money. Furthermore (and this is a very important consideration), the Lieutenant-Governor had looked to the acceptance (by the Select Committee) of the principle of equality between occupancy and non-occupancy rates of rent, and to the adequate enforcement of that principle as a means of preventing the purchaser of an occupancy right, when converted into a tenure-holder, from recovering a higher rate of rent from his undertenants than he himself paid. The principle, however, of equality between the maximum occupancy and non-occupancy rates finds no place in the revised Bill, and this omission is an important factor as affecting the sufficiency of section 37 for the object it was intended to meet as described above. If on reviewing this subject of the transferability of occupancy rights (and it is essential that you should reconsider it with reference to the question of the "convertible tenure" holder) you are of opinion that the danger of such rights falling largely into the hands of money-lenders is a serious danger, then you are expected to say whether the remedy embodied in section 37 of the Bill is adequate to meet it, or whether the difficulties suggested by the Select Committee in the 5th chapter of their report, and by the Government of India at the end of their 6th paragraph, added to such other objections as may occur to you, raise doubts as to the efficiency of the remedy in question. Should no such doubts suggest themselves to you, you will be good enough to consider and report whether the practical difficulties connected with the ascertainment and registration of sub-leases, covering in the aggregate half the holding, would be of a character likely to affect the success of the scheme.

5. *Chapter III.*—With this chapter should be read the remarks contained in paragraph 6 of the letter from the Government of India; and especially those which refer to the difficulty of deciding what holdings are and what are not tenures. Further, it will be observed that section 8 provides for the enhancement of a tenure-holder's rent in certain cases up to double the rent previously payable; while section 10 fixes ten years as the period within which enhancements once obtained cannot be repeated. These provisions differ from the analogous provisions concerning occupancy ryots contained in sections 45 to 50 of the Bill, while this chapter omits precautions of the nature provided by section 41 for cases of private agreement. You are required to take these facts into your consideration, and, with reference to the circumstances of the various districts of your division, to report whether in these respects the Bill may be fairly allowed to stand as it is, or whether modifications (and if so, of what character and extent) should be introduced with a view to assimilating, in regard to all classes of agricultural holdings, the periods of immunity from enhancement of rent, and to regulating on an uniform basis the maximum extent of such enhancements.

I am also to add that it is the Lieutenant-Governor's special wish that you should test the practicability or workable character of the provisions in this chapter by applying them to cases of enhancement of tenure-holders' rents, which have already occurred in practice, or might, with reference to the circumstances of the districts in your charge, be reasonably expected to occur. The points (if any) in which the procedure of the chapter appear inapplicable to, or divergent from, what the existing practice is should be carefully noted, weighed and submitted for the information of Government.

6. *Chapter IV.*—Under this chapter the Government of India, in paragraph 7 of their letter, raise the question of the retention, in its present form, of the 20 years' presumption rule embodied in section 64 (2) of the Bill. As the question has been raised by the Government of India, it is necessary that you should again give it your careful consideration. This presumption is perhaps one of the most valuable provisions which the Bill contains in the interests of the ryots: it is a reasonable presumption, inasmuch as, if it be contrary to the facts, it throws on the landlord no greater burden of proof than in ordinary cases he should be easily able to discharge; it has been, as the Government of India point out, in force for a quarter of a century, and in certain districts, Shahabad for instance, it has very materially altered for the

better, the condition of the ryots who were able to avail themselves of it. The chief objection urged against it is that on transfers of property, particularly at auction sales, it operates with harshness against the purchaser, who is placed at a disadvantage compared with the former owner, in rebutting the presumption. To this, and to other objections (to be found in the published correspondence) which have been urged against the fairness of the presumption, you are now requested again to give your attention. You will be good enough to consider, with reference to the circumstances of your districts, and the frequency or fewness of recent enhancements, whether landlords really experience any practical or reasonable difficulty in rebutting the presumption if unjustly pleaded, and whether, having regard to the wider interests of the agricultural community, it is desirable that the presumption should be retained in its present shape or modified. The arguments which have been urged against the section as it stands will be found in the dissents recorded by the Hon'ble Mr. Gibbon, the Maharajah of Durbhunga and Rai Kristodas Pal.

7. *Chapter V.*—In calling your attention to the points raised by the Select Committee in paragraphs 11 and 12 of their Report, I am at the same time to remind you that the definition of the settled ryot is not now open to general discussion. The only questions therefore which arise on this head are—(*a*) should the capacity of the settled ryot to hold, on an occupancy title, land into possession of which he has been let extend over an entire "estate," or should it cover only a portion of the "estate" when the latter extends over a large tract of country, or into more than one district; and (*b*) should the "estate" within which such a right may accrue to the settled ryot be of the extent it was 30 years ago, or at any more recent date. On point (*a*) you will consider whether, with reference to the circumstances of the districts in your charge, any material or practical loss would unavoidably result to zemindars by retaining the definition as it stands; and if you are of opinion that such loss would result, then you are requested to state whether that loss would be obviated without injury to the just rights of the ryots by limiting the portion of the "estates" within which settled ryots taking lands would at once acquire occupancy rights, to the district or even to the subdivision of a district. On point (*b*) you will take into account the frequency of butwaras in recent years, especially in Behar and Eastern Bengal, and the disintegrating influence which such divisions of property would in many cases have on old-established rights if the "estate" of to-day were to be taken as the envelope of the settled ryots' rights. Another minor point which claims attention is the effect of section 29 (1), and the propriety of retaining such a provision in the Bill, which seems somewhat to conflict with section 28. At the same time cases may occur in which the occupancy ryot buys a share in the estate in which his holding is situated, and you are therefore requested to consider whether to such cases a provision similar to section 29 (2) might be made applicable, so as to prevent the merger of the occupancy right in the holding as it existed previous to the purchase. The effect of such a provision would, in fact, assimilate the occupancy holding to khamar land.

8. Coming now to the incidents of the occupancy right, I am to say that the Lieutenant-Governor will be glad again to be favoured with any remarks you may have to make on clauses (*b*), (*f*), and (*g*) of section 31. The other clauses of the section seem open to few, if any, objections, and therefore the Lieutenant-Governor will not press you to discuss them if you have nothing special to urge on the subject. Under clause (*f*) the main question is transferability, on which some remarks have already been made; and, looking to its vast importance, it is expected that you will again discuss it carefully with reference to the facts existing in each district of your division, if comments of a general nature do not suffice to place accurately before Government the information you may have to impart. What the Government particularly desires you to do is to test, in the light of local experience and existing facts, the conclusions which have been provisionally come to on the subject; and to consider what effect on those conclusions may be reasonably expected to result from any modifications in other portions of the Bill (such as the withdrawal, if deemed inefficient or impracticable, of the safeguards against the intrusion of money-lenders) which you may, on full deliberation, deem it advisable to make.

The possibility of devising a plan whereby transfers of occupancy rights by sale (otherwise than in execution of a decree for arrears of rent) could be restricted to the cultivating classes only should be again considered. Hitherto all attempts in this direction have ended in failure more or less pronounced, much of the difficulty lying in the fact that the mahajun is frequently himself a cultivator. It has indeed been urged by the British Indian Association that it is not desirable to exclude mahajuns of this class from purchasing occupancy rights, and thereby bringing their capital to the promotion of agriculture; and if only some efficient checks could be imposed on the power of such purchasers to rack-rent their under-tenants, the Lieutenant-Governor's apprehensions on the point would be mitigated. There is, however, a large mass of evidence to show that the mahajun, who buys up occupancy rights, is one of the most exacting of landlords. If occupancy rights were to fall largely into the hands of that class, while no protection was afforded to their under-ryots, the results would be highly undesirable. It may be added that whatever conclusion you adopt on the general question of transferability need not be regarded as in any way affecting the wisdom and desirability of declaring that occupancy holdings shall be saleable for their own arrears of rent under decrees of Court in substitution for the system of ejectment recognized by the existing law.

9. With reference to the enhancement of rent provisions (sections 39 *et seq.*), it is desirable that your remarks should fall under two heads—(*a*) the grounds of enhancement; (*b*) the extent to which enhancements may be had. While calling your attention on the first point (*a*) to the remarks made on the subject by the Select Committee, and by the Government of India in paragraph 13 of their letter, and while asking you to fully weigh these remarks, I am also to bring the following matter to your special notice. It has been objected to the first ground of enhancement in section 43, namely, the prevailing rate, that while careful enquiry has failed to discover a "prevailing rate" anywhere except in portions of Jessore, the provision in question either has been, or easily admits of being, abused by the production in evidence of collusive or fictitious rates, and thus creating a leverage for forcing up rents. On the other hand, it has been urged that this ground of enhancement is of long standing, and that, although there may not be one uniform rate for any class of land in a village, still the rents generally payable for any particular class do approximate more or less to a certain standard round which they may be regarded as oscillating under the influence of special disturbing causes. You should give a close examination to these considerations, and should state whether such abuses as those to which I have referred have reached any magnitude in your districts, and whether the abolition of the prevailing rate as a ground of enhancement would tell unfairly on zemindars. Your conclusions on the point should, if possible, be supported by practical instances of the hardships which now may be found to flow from the existence of the rule, or which would probably ensue from its abolition.

10. Then, as to the extent to which enhancement of rent may be had under the Bill as it stands, the changes proposed are of the most material importance. You will observe that the Bill provides for enhancement by suit in court, and by agreement under a registered contract out of court. In court, enhancements to the extent of 50 per cent. on the former rent may be had on the ground of the prevailing rate; to the extent of 25 per cent. on the ground of rise in prices or increase in productiveness due to fluvial action; and to an extent which shall not be "unfair or inequitable" on the ground of improvement effected by the landlord. The ground of natural increase in productiveness owing to indefinite causes has been omitted from the Bill, as general experience has shown it to be wholly unworkable in practice. The rent, if enhanced on any of the above grounds by a decree of court, is, by the Bill, made unalterable for 15 years. On the other hand, in case of agreements for enhancement made out of court, if the term be for seven years, not more than two annas in the rupee increase can be taken, while if the term be fixed for 15 years, the rent may be enhanced to the extent of four annas in the rupee, that is to say, to the full amount which can be obtained in court on the ground of rise in prices, *which is practically the most important ground of enhancement.*

On the broad question of enhancement out of court, it will not, of course, escape your observation that enhancements by private contract have frequently been obtained out of court of such a character as to preclude the belief that the ryots either were free agents or knew what they were doing in agreeing to them. On the other hand, it has been stated that the equalization of the limits of enhancement in and out of court tends to discourage litigation; and, as an abstract principle, any arrangement which would bring the parties together to settle such questions between themselves, without the intervention of the courts, would be a great gain. Having due regard to both aspects of the case, an expression of opinion is required whether enhancements should be allowed out of court, in cases of increased prices or fluvial action, *to the same extent* as in court, where the landlord's claim in all its bearings would be subjected to the closest examination under a judicial enquiry.

Generally, then, the Lieutenant-Governor hopes that your attention will be specially directed to the limitations on enhancement, and that you will carefully consider whether they are appropriate, or whether a more uniform proportion of increase is not desirable. The absence of a definite limit to enhancement on the ground of landlords' improvements is noteworthy, as is also the absence of any provision for deducting the increased cost of cultivation before an enhancement is decreed on the ground of a rise in prices. These are important questions (the latter especially so), and should be examined with careful scrutiny.

11. It only remains to bring prominently to notice one other point on this subject of enhancement of rent, namely, enhancement on re-letting [section 42 (1)]. You will observe that the provisions of Chapter VI place no limit on the rent which may be demanded from a non-occupancy ryot on his first admission to the holding, while the check imposed by section 60 (9) on enhancements demandable after admission seem to be of doubtful efficacy, as it might be held that, when the initial rent is fixed above the prevailing rate, the only limit to a future enhancement of it is the 50 per cent. prescribed by the section. I am later on to call your attention to the question of non-occupancy rents as a most important portion of the Bill; but in this connection I am to point out to you that, as the Bill now stands, and putting out of sight for the moment the interaction of one class of rents upon the other, the non-occupancy ryot's rent may be raised to a much higher figure than the rent of the occupancy ryot can. This is, as far as the Lieutenant-Governor knows, a novel principle which it is now for the first time proposed to introduce into the land law of Bengal, and it is requested that you will very carefully consider it in all its bearings. It will also not escape your notice that by section 42 (1) this higher figure, with a still further addition of four annas in the rupee, can be made the initial rent which a settled ryot may be called on to pay for land which he desires to cultivate. It must be remembered that, through the operation of the pre-emption clauses of the Bill (if they are retained), and through the falling in of tenancies owing to ryots' deaths or desertions of their holdings, a very considerable quantity of *ryoti* land does yearly fall into the hands of landlords, who, under the provisions of this Bill, may deal with it in the first instance under Chapter VI, and let it to non-occupancy ryots at rates above the prevailing occupancy rate. These lands might subsequently be let to settled ryots of the estate or village at further enhanced rates, and so become occupancy lands, the enhanced rate payable for which would be available as evidence to raise the hitherto prevailing occupancy rate of the village. Having regard to all these points, the vast importance of the effect on the prevailing occupancy rate of section 42 (1) becomes at once apparent. The question then has to be decided whether it is requisite, in the interests of the landlords, just to the great body of occupancy ryots, or desirable in the general interests of the country, that the scale of occupancy rents should, over and above the grounds of enhancements specified in section 43, be also exposed to the disintegrating and enhancing effect which the provisions of section 42 (1) are calculated to produce. It will be observed that, under the Bill as it stands, there will be classes of occupancy lands at the old prevailing rates; classes of new occupancy lands at rates [framed under sections 42 (1) and 60 (9)] higher than the old prevailing rates; and classes of non-occupancy lands held at rates varying from, but mostly higher than, either of the above

rates. The tendency in all these cases will be to level up rents to the highest point—a tendency which will be complicated by the restrictions on enhancement of rents of various classes of ryots holding these lands. Upon these facts you are requested to say, with reference to the circumstances of your division, whether there is any danger of intricate and costly litigation resulting from such a state of things as the Bill seems calculated to introduce. You will observe from paragraph 12 of their letter that the Government of India have doubts as to the dangerous effect of section 42 on occupancy rates; and that His Excellency the Governor-General in Council has expressed a desire for the Lieutenant-Governor's opinion as to whether the anticipated danger is real, and if so, in what way it might best be met. The Lieutenant-Governor has no doubt the danger is real, and that it cannot be met by concentrating attention on the occupancy ryot alone. This matter will be dealt with more fully under Chapter VI, relating to non-occupancy ryots.

12. In this connection also I am to call your special attention to the question of *bastu* (homestead) lands, or village sites, the terms on which such land are now held, and the extent (if any) to which such terms, if now different, should be assimilated to the conditions which regulate the tenure of ordinary arable land. Section 216 pre-supposes two cases as covering the whole ground occupied by the *bastu* question, (*a*) where bastu is an integral portion of the holding held by the ryot on no stronger or separate title, and subject to no separate conditions from those which attach to the holding as a whole; (*b*) where the *bastu* or site of the ryot's house is held on a tenure and subject to conditions different from that on which the arable land may be held. It is understood that the *bastu* question is affected by many and various local peculiarities, and the views provisionally accepted in regard to it by the Select Committee may be found incomplete and inaccurate. For instance, having regard to the fact that homestead lands are usually raised above flood-level, and otherwise improved at the ryot's sole expense, it may be a question whether they should not, in accordance with the spirit of section 43, be exempted from enhancement altogether. It has been brought to the Lieutenant-Governor's notice that excessive enhancements of rates payable for homestead lands is the screw applied for raising rents in those districts where there is still waste land and a demand for tenants. The affection inherent in the ryot for his *bari* prevents his leaving an exacting landlord for one more lenient. And this power of the landlord over the ryot would be more marked if the arable portion of the holding consisted wholly or chiefly of land held on an *utbundi* or *hal hasili* tenure. These considerations will no doubt receive full attention from you; and as the importance of the question, and its relation to the well-being of the ryot, cannot be overrated, it is hoped you will spare no pains to give, in regard to it, the fullest information and the best advice you can. You are specially requested to state whether, in any of your districts, a custom prevails whereby a ryot, who is ejected from, or who otherwise parts with, his holding is entitled to retain possession of his homestead lands; and if so, on what conditions. In districts where butwaras are common, detailed information must be available regarding *bastu*, and from that source, and from information derivable from the Civil Courts, valuable facts may be ascertained. No portion of a Butwara Deputy Collector's work is more difficult, or contested by parties, than the apportionment of *bastu* (unless, indeed, it be the apportionment of *khamar* or *sir*), thus showing the importance attached by both landlord and ryot to the command of the village site. It may be added that the *bastu* question, in the case of non-occupancy ryots, is only second in importance to the question as it affects the ryots with right of occupancy, because the latter are more numerous than the former. This remark seems called for, as, from paragraph 2 (4) of the Government of India's letter, it might be inferred (the Lieutenant-Governor does not think it was intended that it should be inferred) that in regard to non-occupancy ryots, the *bastu* question was immaterial.

13. Passing on to the provisions for reduction of rent by suit in court, the Lieutenant-Governor desires to ask your attention to the concluding portion of section 51 (*a*). As Mr. Rivers Thompson reads that portion of the section, the deterioration in the land which would justify a reduction in rent must be the result of some incident admitting of precise definition as to time of occurrence

and as to manner of operation. You are requested to examine, with reference to the actual facts existing in your division, whether that statement would cover all cases, or whether it may not happen that deterioration of the soil, disabling it from paying a certain sum as rent may not, as in the case of the efflorescence of *reh*, be brought about imperceptibly by causes of which the origin and the action cannot, with any accuracy, be predicated. A reference, too, is requested to the remarks contained in the 14th paragraph of the letter of the Government of India, and paragraph 44 of the Select Committee's Report, in regard to the commutation of grain rents to money rents (section 53). The Lieutenant-Governor desires only here to invite your attention to the provisions of section 64 (3), and would ask you to consider whether, with regard to the 20 years' presumption of clause (2), a fixed proportion of the crop can be fairly considered, having regard to the rise and fall of price, as the natural and equivalent antecedent of a money rent invariable over a term of years.

14. As regards price-lists (section 52), the chief matters for your consideration are whether the prices-current for local markets (of which the sub-divisional prices-current are understood to be the averages, just as the district price-current lists are the averages of the sub-divisional lists) have been preserved in the district or sub-divisional record offices for, say, a period of 15 years. If so, I am to enquire whether the correctness of these lists can be verified, and, when necessary, corrected by comparison with the books of grain-dealers in the markets to which the lists refer. If this cannot be done for local markets, can it be done for the markets situated at the head-quarters of sub-divisions? Lists showing the prices prevailing at the district head-quarters alone, or the averages of local prices, do not furnish the information as to prices prevailing at harvest time which the Bill contemplates. If the local price-lists have not been preserved, then it should be stated, after local enquiry (which should be made in the most thorough manner and by the most trustworthy agency at your disposal), whether it is possible to ascertain and construct from the records of grain-merchants, bazar chowdrys, &c., a correct list of the prices of the staple food-crops of your district for the last 15 years. In order to guide your enquiries on this point, I am to attach a statement showing, according to recent information, what food-crops may be considered staples in each district. Should this statement, on examination, seem to you in any way defective, either as to the sort of grain produced, or its relative proportion to other grain crops grown in the district, you are requested to introduce the necessary corrections into the statement and return it to this office with your report.

15. Turning from the preparation of price-lists to the method of using them for the purpose of enhancement suits, I am to call your attention to section 45 of the Bill, and to the remarks of the Select Committee in paragraphs 33 and 34 of their Report. The Government of India also deals with the subject in the 13th paragraph of its letter. The primary points for consideration are whether enhancements can be fairly allowed in direct proportion to the rise in price, or whether it is not essential that some allowance should be made for the increased cost of production which usually attends a general rise in prices, and whether, if you think this should be done, any distinction as to extent of deduction should be drawn between remote districts unconnected by railways, &c., with large markets, and districts enjoying good communications. It would greatly help the Government if the effect of the proposals could be illustrated by examples from actual practice.

It has been suggested that possibly the regulation of rents, with reference to the prices of staple food-grains alone, would tell unfairly against landlords, who might thus be debarred from sharing in the increased profit arising from the cultivation of such crops as jute. The figures, however, representing the course of the jute market at Serajgunge for the last 15 years, which are appended to this letter, would seem to show that landlords have nothing to expect in the way of enhancement by including jute in the list of crops to which appeal might be made. It is, however, alleged to be the fact in the eastern districts that jute and rice are often interchangeable crops, being sown in the same sort of soil. When rice stocks are large, it is said that more land is sown with jute; when rice stocks are short, the cultivation

of jute is contracted in favour of rice. Thus it would happen that when rice is cheap, jute is dear, and *vice versâ*. If such a connection as this were proved to exist between jute and rice cultivation, then, indeed, a stronger case than now exists might possibly be made out for appealing to jute prices as a standard of rent as well as to the prices of rice or of dhan. To this point your attention is requested if jute be a staple in your division. The Lieutenant-Governor is not aware that such a question arises in case of any other crop. No other non-food crop, not even sugarcane, seems to vary as to area of cultivation with the prices of the staple food-grain; but should such a state of things prevail in your division, you are requested to report on it.

16. *Chapter VI*—Applies exclusively to non-occupancy ryots. You will at once observe that its contents differ radically from the provisions of the Bill as introduced into Council, and if the provisions of the first draft told too severely against the landlords, it is open to question now whether the chapter as it stands does not err on the other side. When the Bill was first under consideration last year, Mr. Rivers Thompson objected to different maxima being imposed on the rents of occupancy and non-occupancy ryots, and he refers now to the remarks he then made because, although the maxima limits on rents have been withdrawn, the fundamental difference to which he then objected is still retained. In paragraph 20 of the letter of the 27th September, the Lieutenant-Governor wrote as follows:—

> If the one-fifth, or 20 per cent. limit, be justifiable as regards occupancy ryots, the question remains—Is five-sixteenths or 31¼ per cent. of the produce fair as regards the non-occupancy ryot? On this point I am to suggest, for the consideration of the Council, whether the provisions of section 119 of the Bill, as far as they refer to what is there called the "ordinary" ryot, do not introduce an unconstitutional and dangerous principle into the law of Bengal. In the statement made by the Hon'ble Mr. Reynolds in his speech in Council, to the effect that it is not, and never has been, the law of Bengal that an occupancy ryot should hold at privileged rates, the Lieutenant-Governor concurs; and it therefore becomes a matter for consideration whether, if the one-fifth limit be fair for ryots with occupancy rights, five-sixteenths is not unfair for ryots without them. The origin of the provision as it stands is probably due to Sir Richard Temple's effort to fix occupancy rates with reference to competition rates, by giving the occupancy ryot a beneficial deduction on such rates. But the enquiries which were made in connection with that proposal showed that competition rates hardly existed, and that custom, not competition, ruled the rents of occupancy and non-occupancy ryot alike, unless where considerations of caste intervene. Recent enquiries point to the same conclusion, and it is therefore, in the Lieutenant-Governor's opinion, a matter of doubtful expediency that a novel principle should now be introduced into the law of these Provinces, which, besides, would be calculated to lead to general enhancements of rent, which it is the avowed object of the Government to avoid. It must not be forgotten that if we call into existence two classes of occupancy ryots—one holding at higher rates than the other (and this would be the effect of sections 79, 95, and 119 of the Bill combined)—the tendency will be towards an equalization of rates at the higher level. As at present advised, Mr. Rivers Thompson thinks that this is a danger which we should not run the risk of incurring, and that, if a rack-rent limit is to be preserved in the Bill at all, it should be the same for both occupancy and non-occupancy ryots. He has no objection to five-sixteenths of the produce in the case of under-tenants (khurfas) who can never acquire occupancy rights; but he thinks that there is great danger to the cultivating classes in the provision of a separate limit for occupancy and non-occupancy ryots. Separate limits are tantamount to a premium on the discouragement of fixity of tenure.

From this passage you will perceive that the equality of occupancy and non-occupancy rates was defended as well on the ground of constitutional principle as of practical expediency. It was proposed as a substitute for different maxima limits on rent; but in the Bill as now drafted, neither the principle of limiting rents to one-fifth portion of the produce, nor the principle of equality of rates, finds a place. The Government of India (paragraph 15 of their letter) have now expressed a wish to learn the views of the Government of Bengal before coming to a final conclusion in the matter, which cannot be dissociated from the question of occupancy rates referred to in paragraph 11 of this letter.

It is admitted on all hands that the *status* of the non-occupancy ryot needs improvement, and in point of fact the question for you to advise upon is whether this chapter effects any improvement in it, or whether, having regard to the substitution of the novel English lease limiting the term of the tenancy, for the customary Indian pottah, which only prescribes its conditions, the chapter does not place the non-occupancy ryot in a worse position than he is under the present law. It is true that the initial

lease will apply to new tenancies only; but having regard to actual experience, it is to be feared that most, if not all, non-occupancy ryots may have to relinquish and re-enter under a lease. Moreover under the existing law a landlord need not, and it is understood that usually he does not, take any steps to bar the acquisition of the occupancy right till the tenth or eleventh year of the holding. Under the provisions of the present Bill, short leases will probably become the rule, and ejectment will be sued for at the close of the fifth or sixth year of the ryot's tenancy if the landlord would neutralize the effect which the concession of the statutory lease under section 60 (7) might have on the ryot's tenure of the land. It is unnecessary to dwell at any length on the evil effects which such a condition of things would inevitably produce. It is an established fact that, especially in Behar and in Eastern Bengal, landlords do systematically oppose by all means in their power the growth of occupancy rights. It will be for you now to say, with reference to the facts of your division, whether the provisions of the Bill to which I have now drawn your attention are calculated to intensify or to remove the difficulties which are interposed to prevent the acquisition of the occupancy right, whose growth it is the policy of Government to facilitate, having due regard to the just interests of the landlords.

17. *Chapter VII.*—The subject of this chapter has already been to some extent discussed, and here the only point in connection with it, to which the Lieutenant-Governor desires to call attention, is the question whether the limitation of under-ryots' rents would be fair, say to ryots holding at low fixed rates, or whether such a limitation would be effective in practice. With reference to this question you will, of course, have regard to the provisions of section 37, which, if accepted by you as workable, would no doubt have an important effect in checking rack-renting. If, in your opinion, the limitations in the Bill are likely to prove unfair in certain cases, or impracticable, then you are requested to state whether you consider any limitations at all on under-ryots' rents desirable, and if so, the lines which such limitations should follow. Your attention is also drawn to section 38 of the Bill, and your opinion on the propriety of the limit thereby imposed on the terms of leases to under-ryots requested. The point to be considered is—would such a limitation have any effect in checking the practice of subletting ?

18. *Chapter VIII.*—As your attention has already been called to the questions of the 20 years' presumption, and the proposal to accept grain rents as the equivalent antecedent of the commuted money-rent with reference to that presumption, the Lieutenant-Governor will not again refer to those questions here. Nor does he think that any other provisions of the chapter, except those mentioned in paragraph 17 of the letter of the Government of India, need be brought to your notice with special prominence. The remarks of the Government of India regarding the sufficiency and propriety of the provisions of the chapter on the subject of *baouli* rents in South Behar should receive special attention from the Collectors of Gya, Shahabad, and Patna, as should the adequacy of the forms of receipt and account in Schedule III of the Bill from all Collectors.

19. *Chapter IX.*—The provisions regarding improvements may not appear at the present moment to be of much practical utility, but there is reason to hope that in the future they will be found valuable. The Lieutenant-Governor, therefore, wishes you to consider whether they are such as are likely to be found generally workable, and he specially requests your opinion whether, without any infringement on the landlords' rights, and with advantage to the ryot and the general interests of the country, the right of constructing a well is one to which the non-occupancy ryot should be declared entitled (see section 90). The point is perhaps of more importance in Behar than in Bengal Proper, where well irrigation is not so general or necessary; but in Behar, and should the Act be subsequently extended to Chota Nagpore, in the latter division, the question is one of great and growing importance. In this connection you might conveniently enquire into the question raised in clause (1), paragraph 2 of the letter of the Government of India. In regard to it the opinion of Collectors of Canal Districts and of Irrigation Officers, and of non-officials who use canal water on a large scale, such as the Sarun indigo planters and Messrs. Mylne and Thomson of Behea, would be valuable.

20. The Government of India call attention, in paragraph 18 of their letter, to section 96, dealing with abandonment of holdings, and the Lieutenant-Governor also requests you to consider, with reference to local facts, whether the section as it stands exposes the occupancy or non-occupancy ryot to a material danger of having actual rights, no longer capable of invalidation by the landlord, destroyed, or the further growth of inchoate rights suppressed. The question should be considered in connection with the subject of enhancements to which your attention has been called in paragraphs 11 and 16 of this letter; for the danger is that these provisions as to abandonment may be abused in order that land may be cleared of old ryots and enhanced rates imposed on new-comers. If the difficulties pointed out in paragraphs 11 and 16 above can be satisfactorily solved, the solution would have an effect on the abandonment question also by removing the apprehended danger. That a real danger is, however, apprehended, there can be no doubt. Authentic information is before the Government of cases in which landlords have expelled ryots from their holdings without any legal formalities whatever, and introduced new ryots at higher rents. By such an exercise of power the landlord may no doubt become amenable to criminal penalties; but the ryot, once ejected from his holding, is not always able or willing to seek redress. Should then no satisfactory solution regarding the equalization of occupancy and non-occupancy rates present itself to you with reference to paragraphs 11 and 16 above, the question the Lieutenant-Governor would ask you to consider is whether the provisions of section 96 are calculated to promote the exercise of arbitrary power on the part of landlords or not. Should your judgment be in the affirmative, it is hoped you may be able to suggest some means of reconciling the interests of the landlord and the ryot on the question. It has been suggested that in case of an occupancy holding, which is a valuable right, the interest of the presumed deserter should be sold; but to that suggestion objection has been taken in the landlords' interests. The point, however, is still open to discussion, and Mr. Rivers Thompson will be glad to have an opinion upon it.

21. With regard to the provisions for measurement of lands, you will observe that the landlord's right to measure *all* lands within his estate is affirmed. The present law does not allow him to measure lakhiraj lands, and a report is required whether, assuming that you generally approve of the provisions on this point contained in the present Bill, it is advisable that the measurement of lakhiraj holdings should extend to a survey of internal details, or only of external boundaries. You are also requested to state whether you think any inconvenience is likely to result from the provisions of section 101, declaring that the actual measurement shall be made not by the local, but by the English system of mensuration. To this provision it has been objected that parties interested in the measurements would be unable to watch or follow the amin, who would accordingly be freed from the check on his proceedings, which publicity even now does not always make effective. Therefore suspicion and dissatisfaction would, it is suggested, attend his proceedings even when not open to reproach. The question then is, should the measurement be made according to the officially determined local pole, conversion into English measure being subsequently had, if necessary; or should the process be reversed.

22. With regard to the appointment of managers, as the landlords apprehend much difficulty and friction from the provisions contained in section 102 of the Bill, the matter should again receive your careful attention. There fear is that the manager would too often act detrimentally to the interests of the proprietors, while he would seek to enrich himself at the expense of proprietors and ryots alike. This aspect of the case is not a new one, but it claims reconsideration with regard to the difficulties which now very frequently arise from shareholders' disputes.

23. *Chapter X.*—To the provisions regarding the record of rights and the settlement of rents, the Lieutenant-Governor attaches the highest importance, because it is the first earnest attempt to carry out what has often been contemplated, but never attempted, viz. to record by authoritative enquiry the rights in their holdings of the entire agricultural community in Bengal. The proposal is one of very great magnitude, and its execution must extend over a

long period of years, but to its successful accomplishment alone can we look for the great administrative advantages which must ensue in the security of the cultivating classes in their possessions, and the establishment of proper relations generally between landlords and tenants. The Lieutenant-Governor specially requests that, with the observations upon them, contained in paragraphs 71 to 77 of the Select Committee's Report, and in paragraphs 19 to 21 of the letter of the Government of India, the sections of this chapter may be carefully considered by you and by your Collectors, both with reference to the facts to be recorded, the adequacy of the powers taken for the purpose of ascertaining and recording them, and the appropriateness of the procedure for the object in view. He also invites your attention to section 116 (2), and begs that you will give your careful opinion as to whether it is desirable that only a presumption should arise in favour of the correctness of facts ascertained with due care in the full light of publicity, and with ample opportunity to the parties interested to contest them; or whether it is to the general interest that the facts, as ascertained (and if not all, then what facts) should be regarded as conclusively established for a certain specified period.

24. *Chapters XI and XII.*—To the points under these chapters, to which the Government of India draw attention in paragraphs 22 and 23 of their letter, the Lieutenant-Governor desires only to add a hope that you will, with reference to the circumstances of your division, carefully consider whether there is in existence any land, other than the land defined in section 138 (1), which is commonly recognized as not of a character in which the cultivator can ordinarily acquire the right of occupancy.

25. *Chapter XIII.*—Coming now to the important subject of distraint, you will observe that, in the opinion of the Government of India (an opinion from which the Lieutenant-Governor is not now disposed to dissent), the question lies between the retention of distraint as it exists under the present law (with perhaps sharper penalties in case of abuse) and distraint exercised through the courts in the way prescribed by the Bill. It is urged by the landlords that the right of distraint, though not always exercised, is essential to the recovery of their rents, especially in the case of non-occupancy ryots, in border districts or on chur lands; while, on the other land, it is beyond doubt that the right of distraint (as it now exists) has been greatly abused with the object of enhancing rents, or of recovering legally irrecoverable arrears. It may well be, as experience has in some instances proved, that the abuse of the right of distraint is within the power of the executive to suppress, and the Lieutenant-Governor himself thinks that there is a great deal in the statement that "in the case of an improvident peasantry a remedy against the crop is a more humane process than a remedy against the land." All these and other considerations which your experience must suggest will doubtless be weighed by you, and Mr. Rivers Thompson trusts that, on a subject to which your attention has in all probability been specially directed by recent discussions, you will be able to give practical advice.

26. *Chapters XIV and XV.*—The procedure in suits and in execution laid down in the Bill are subjects on which the Hon'ble Judges of the High Court have been invited to advise the Government of India, and on which the Lieutenant-Governor may find it necessary to consult mofussil judicial officers. Still the views of executive officers are very desirable, particularly on sections 163, 164, 168, 171, 175, 177, 185 and 186, and I am accordingly to request that you will take the chapters, and especially the sections specified, into your consideration, and communicate to the Lieutenant-Governor your opinions regarding them. As the Chota Nagpore Landlord and Tenant Act [1 (B.C.) of 1879, section 39] provides for suits against ryots collectively, and as it is the desire of the zemindars that a similar provision should be introduced into this Bill, the authorities in that division will again be called upon to report what has been in practice the effect of such a provision in Chota Nagpore.

27. *Chapter XVI.*—This chapter reproduces the regulation law for the sale of patni tenures, with only such modernization of language and such few improvements in procedure as experience had shown to be necessary. The Lieutenant-Governor is not aware that these provisions are open to any objection, but if you are of a contrary opinion, you are requested to state the grounds of it.

28. With reference to section 209, I am to refer you to paragraph 14, page 17 of my letter No 972T—R of 27th September, to the Government of India, and to request that, if you have any views as to the direction which legislation on the subject of the registration of tenures should take, whether on the lines of Act VII (B.C.) of 1876 or otherwise, you will be good enough to favour the Lieutenant-Governor with an expression of them.

29. *Chapter XVII.*—The questions raised in this chapter regarding homestead lands have been referred for your consideration in an earlier part of this letter, and need not be again alluded to. The utbandi and hal hasili system will be referred to later on, and therefore in this connection all that you need discuss are the provisions regarding *chur* and *deara* lands. I am also to ask that, having carefully examined the provisions of section 210, you will state whether you agree that freedom of contract should be barred in all the cases specified, or whether you think that there are other cases also, not mentioned in the section, to which the prohibition should be extended, or whether you think that, in some of the cases specified (stating which), freedom of contract might be allowed.

30. The remaining chapters of the Bill call for no particular remarks, except as regards section 227, chapter XIX. It is requested that, having assured yourself as to the custom prevalent in each district of your division regarding pasturage, you should state whether, in your opinion, the requirements of the case are sufficiently met by section 227, and if not, what you would propose in order to meet them.

31. The observations which have now been made are intended to draw your attention to the main points of the measure, which are still open to discussion, in the order in which they occur in the Bill. They are not intended as an exhaustive enumeration of the sections on which you are at liberty to comment, but rather as an aid in a work which the Lieutenant-Governor fears you may, amid your many other duties, find onerous, and as supplementary to the remarks of the Government of India and the Select Committee. The questions raised in the initial paragraphs of the Government of India's letter remain to be noticed. Regarding the questions raised in paragraph 4, I am to say that the Lieutenant-Governor will not trouble you, for they are questions which can be adequately discussed by him in communication with the Board of Revenue alone; while to some of the points specified in paragraph 2, namely the acquisition of land for landlords' irrigation channels, the accuracy of price-lists, the possibility of framing a system of enhancement on them, and the legislation necessary in regard to homestead lands, your attention has already been drawn. The points in paragraph 2 of the Government of India's letter which demand consideration are those numbered 2, 3, 5 and 6. In regard to point (2), the first thing to do is to ascertain whether the district records give any information regarding the existence in your division of dependent taluks of the kind in question. If from your records any such are found to exist, or if, from sources independent of your official records, authentic information as to their existence is furnished, it will then be necessary to consider whether any inconvenience has been experienced by zemindars from the present practice; and even then whether, having regard to the small proportion which the revenue fixed at the time of the settlement on such taluks presumably bears to their present value, it is desirable to subject them to the summary sale procedure provided by the Bill, or to some less drastic measure. It might also be considered whether the objects which the landlords have in view might not, in the case of the larger taluks at all events, be got over by regarding them henceforward as independent taluks liable to pay revenue to Government direct.

32. With regard to point (3), observations to some extent of a similar character apply. The tenures in question are so valuable, and the arrears due are usually so small and so well secured, that it will be well to ascertain whether the inducement to abstain from even demanding arrears from such tenure-holders, in order that through default their tenures might come into the market, might not create an evil of greater magnitude than any temporary inconvenience which may now result from the existing state of things. These remarks are offered with the object of suggesting, for your consideration, certain aspects of the case which strike the Lieutenant-Governor

as worthy of being examined. Any suggestions you make for mitigating the difficulties complained of by the landlords will meet with Mr. Rivers Thompson's careful attention.

33. In regard to point (5), I am to say that the information before Government as to the precise nature of the *utbundi* and *hal hasili* system is not as full or precise as could be wished, and accordingly you are requested to give a clear description of the tenures in question, if any such exist in your division, with their incidents, and a statement of the reasons why the ordinary incidents of ryoti land should not apply to them. Accounts of these tenures are, no doubt, contained in the Statistical Account of Nuddea, and in Administration Reports or official memoranda. References to them are also to be found in various law reports; but, for the purpose in hand, it is desirable that these accounts and reports should now be examined, their defects (if any) supplied, and the result communicated to Government in concise but adequate form. At the same time you are requested to state whether, if tenures known as *utbundi* or *hal hasili* do not exist, any other tenures, bearing the generally known attributes of such, are to be found, and if so, how you would treat them with reference to the matter in hand. The reference to Chittagong is one which will be considered in communication with the Board of Revenue, as well as in communication with the Commissioner, as the character of land tenures in that division have recently formed the subject of exhaustive discussions between the Board and Government.

34. With reference to point (6), it will have been observed that the pre-emption sections of the Bill apply only to occupancy rights; but there are in existence, in various portions of Bengal, certain holdings which lie on the border land between clearly defined tenures and cultivating occupancy rights. Such are the *guzasta* holdings in Shahabad, the *gorabundi* holdings in Bhagulpore, the *jotes* of Rungpore, and the *howalas* of the deltaic districts. These holdings have admittedly been transferable by custom for generations, without any right of pre-emption being reserved to the landlord, and it is felt that to subject them now to the landlord's right of pre-emption would depreciate the value of the property to the owner, and possibly lead to inconveniences which it is desirable to avoid. The question then is, can all such semi-tenures, which it is not desirable to subject to the right of pre-emption, be enumerated in the Bill, and thus excluded specifically from the pre-emption clauses, or are such holdings so numerous as to class and so ill-defined that the just interests of their owners can only be protected by such a clause as section 217, which saves custom.

35. In conclusion, I am to express the Lieutenant Governor's earnest hope that you will make sure of your report reaching this office not later than the 14th August next.

Circular No. 4T—R.

COPY forwarded to the Collector of

By order of the Lieutenant-Governor of Bengal,

H. H. RISLEY,

Offg. Under-Secretary to the Government of Bengal.

DARJEELING,
The 24th May 1884.

Statement showing the Principal Food-grains of all districts, except those of the Chota Nagpore and Orissa Divisions, and the approximate proportion which the outturn of each bears to the entire outturn of Food-grains in the district.

Names of Districts.		Principal food-grains.	Proportion of outturn borne to the total outturn of food-grains in the district.	Remarks.
			Per cent.	
Burdwan Division	Burdwan	Rice	88	
		Pulses	10	
		Wheat	2	
	Bancoora	Rice	87·50	
		Pulses	6·25	
		Wheat, Indian-corn, &c.	6·25	
	Beerbhoom	Rice	85	
		Wheat	9	
		Pulses	6	
	Midnapore	Rice	100	Wheat and maize also produced to a small extent.
	Hooghly	Rice	87·5	
		Pulses	12·5	
	24-Pergunnahs	Rice	88·8	
		Pulses	11·2	
Presidency Division	Nuddea	Rice	.....	
		Pulses	.....	
		Barley	.....	
	Khulna	Rice	87·5	
		Pulses	12·5	
	Jessore	Rice	88	
		Pulses	10	
		Wheat, cheena and barley	2	
	Moorshedabad	Rice	90	
		Kalai	3	
		Gram	2	
		Other grains	5	
Rajshahye Division	Dinagepore	Rice	92	
		Kalai	68	
	Rajshahye	Rice	75	
		Pulses	18·75	
		Wheat, &c.	6·25	
	Rungpore	Rice	88	
		Khesari	8	
		Wheat	4	
	Bogra	Rice	88	
		Gram and pulses	9	
		Cheena	3	
	Pubna	Rice	90	
		Pulses	5	
		Millets	5	
Dacca Division	Dacca	Rice	62·50	
		Gram, cheena, and pulses	37·50	
	Furreedpore	Rice	75	
		Cheena	8	
		Pulses	6	
		Other crops	11	Apparently these are not all food-grain crops.
	Backergunge	Rice	75	
		Kalai or khesari	15·75	
		Masuri	9·25	
	Mymensingh	Rice	45	
		Kalai	22	
		Other food-grains	33	
	Tipperah	Rice	100	
Chittagong Division	Chittagong	Rice	89	
		Pulses	11	
	Noakholly	Rice	92	
		Gram and pulses	8	
Patna Division	Patna	Rice	68·75	
		Indian-corn	12·50	
		Barley	18·75	
	Gya	Rice	50	
		Gram	25	
		Wheat	18·75	
		Other crops	6·25	
	Shahabad	Rice	70	
		Wheat	14	
		Barley	7	
		Other grains	9	
	Durbhunga	Rice	62·5	
		Millet	25	
		Indian-corn	12·5	
	Mozufferpore	Rice	37·50	
		Maize	22	
		Barley	12·50	
		Other crops	28	
	Sarun	Indian-corn	40	
		Rice	20	
		Barley	15	
		Other food-grains, wheat, gram, &c.	25	
	Chumparun	Rice	55	
		Indian-corn	25	
		Wheat and barley	20	
Bhagulpore Division	Monghyr	Rice	50	
		Wheat	18·75	
		Indian-corn	12·50	
		Pulses	18·75	
	Bhagulpore	Rice	62·50	
		Indian-corn and marwa	18·75	
		Wheat	18·75	
	Purneah	Rice	75	
		Kurti (a species of vetch or bean)	16·7	
		Wheat and masuri	8·3	
	Maldah	Rice	70	
		Millet	10	
		Cold-weather crops	20	

Statement showing the mean highest and lowest rates per maund of ordinary sacking and bagging Jute in the Serajgunge Bazar, 1868 to 1883.

I.

Year	January Highest	January Lowest	February Highest	February Lowest	March Highest	March Lowest	April Highest	April Lowest	May Highest	May Lowest	June Highest	June Lowest	July Highest	July Lowest	August Highest	August Lowest	September Highest	September Lowest	October Highest	October Lowest	November Highest	November Lowest	December Highest	December Lowest
	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
1868	3 0 0	2 5 0	3 0 0	2 5 0	3 0 0	2 5 0	3 14 0	2 7 0	3 4 0	2 13 0	3 4 0	2 13 0	3 0 0	2 6 0	3 13 0	2 6 0	3 4 0	2 9 0	3 6 0	2 13 0	3 6 0	2 13 0	3 9 0	2 13 0
1869	3 1 0	2 6 0	3 0 0	2 5 0	3 9 0	2 6 0	3 10 0	2 6 0	3 12 0	2 7 0	3 0 0	2 9 0	3 1 0	2 10 0	3 7 0	2 6 0	3 12 0	2 13 0	3 10 0	2 6 0	3 10 0	2 5 0	3 11 0	2 5 0
1870	3 0 0	2 5 0	3 10 0	2 5 0	3 14 0	2 5 0	3 15 0	2 6 0	3 6 0	2 4 0	3 6 0	2 6 0	3 7 0	2 10 0	3 0 0	2 5 0	3 8 0	2 6 0	3 0 0	2 6 0	3 1 0	2 5 0	3 0 0	2 4 0
1871	3 12 0	2 5 0	3 15 0	2 5 0	3 5 0	2 5 0	3 5 0	2 6 0	3 0 0	2 4 0	3 0 0	2 4 0	3 7 0	2 6 0	3 7 0	2 6 0	3 7 0	2 6 0	3 9 0	2 7 0	3 6 0	2 5 0	3 7 0	2 5 0
1872	3 7 0	2 5 0	3 14 0	2 5 0	3 14 0	2 5 0	3 14 0	2 6 0	3 0 0	2 4 0	3 0 0	2 4 0	3 7 0	2 6 0	3 7 0	2 6 0	3 7 0	2 6 0	3 9 0	2 7 0	3 6 0	2 5 0	3 7 0	2 5 0
1873	3 7 0	2 5 0	3 14 0	2 5 0	3 14 0	2 5 0	3 10 0	2 6 0	3 0 0	2 4 0	3 0 0	2 4 0	3 7 0	2 6 0	3 7 0	2 6 0	3 7 0	2 6 0	3 9 0	2 7 0	3 6 0	2 5 0	3 7 0	2 5 0
1874	3 7 0	2 5 0	3 14 0	2 5 0	3 14 0	2 5 0	3 10 0	2 6 0	3 0 0	2 4 0	3 0 0	2 4 0	3 7 0	2 6 0	3 7 0	2 6 0	3 7 0	2 6 0	3 9 0	2 7 0	3 6 0	2 5 0	3 7 0	2 5 0
1875	3 7 0	2 5 0	3 14 0	2 5 0	3 14 0	2 5 0	3 10 0	2 6 0	3 0 0	2 4 0	3 0 0	2 4 0	3 7 0	2 6 0	3 7 0	2 6 0	3 7 0	2 6 0	3 9 0	2 7 0	3 6 0	2 5 0	3 7 0	2 5 0
1876	3 7 0	2 5 0	3 14 0	2 5 0	3 14 0	2 5 0	3 10 0	2 6 0	3 0 0	2 4 0	3 0 0	2 4 0	3 7 0	2 6 0	3 7 0	2 6 0	3 7 0	2 6 0	3 9 0	2 7 0	3 6 0	2 5 0	3 7 0	2 5 0
1877	3 7 0	2 5 0	3 14 0	2 5 0	3 14 0	2 5 0	3 10 0	2 6 0	3 0 0	2 4 0	3 0 0	2 4 0	3 7 0	2 6 0	3 7 0	2 6 0	3 7 0	2 6 0	3 9 0	2 7 0	3 6 0	2 5 0	3 7 0	2 5 0
1878	3 7 0	2 5 0	3 14 0	2 5 0	3 14 0	2 5 0	3 10 0	2 6 0	3 0 0	2 4 0	3 0 0	2 4 0	3 7 0	2 6 0	3 7 0	2 6 0	3 7 0	2 6 0	3 9 0	2 7 0	3 6 0	2 5 0	3 7 0	2 5 0
1879	3 7 0	2 5 0	3 14 0	2 5 0	3 14 0	2 5 0	3 10 0	2 6 0	3 0 0	2 4 0	3 0 0	2 4 0	3 7 0	2 6 0	3 7 0	2 6 0	3 7 0	2 6 0	3 9 0	2 7 0	3 6 0	2 5 0	3 7 0	2 5 0
1880	3 7 0	2 5 0	3 14 0	2 5 0	3 14 0	2 5 0	3 10 0	2 6 0	3 0 0	2 4 0	3 0 0	2 4 0	3 7 0	2 6 0	3 7 0	2 6 0	3 7 0	2 6 0	3 9 0	2 7 0	3 6 0	2 5 0	3 7 0	2 5 0
1881	3 7 0	2 5 0	3 14 0	2 5 0	3 14 0	2 5 0	3 10 0	2 6 0	3 0 0	2 4 0	3 0 0	2 4 0	3 7 0	2 6 0	3 7 0	2 6 0	3 7 0	2 6 0	3 9 0	2 7 0	3 6 0	2 5 0	3 7 0	2 5 0
1882	3 7 0	2 5 0	3 14 0	2 5 0	3 14 0	2 5 0	3 10 0	2 6 0	3 0 0	2 4 0	3 0 0	2 4 0	3 7 0	2 6 0	3 7 0	2 6 0	3 7 0	2 6 0	3 9 0	2 7 0	3 6 0	2 5 0	3 7 0	2 5 0
1883	3 7 0	2 5 0	3 14 0	2 5 0	3 14 0	2 5 0	3 10 0	2 6 0	3 0 0	2 4 0	3 0 0	2 4 0	3 7 0	2 6 0	3 7 0	2 6 0	3 7 0	2 6 0	3 9 0	2 7 0	3 6 0	2 5 0	3 7 0	2 5 0

II.

Period.	Yearly average price per maund — Highest.	Yearly average price per maund — Lowest
	Rs. A. P.	Rs. A. P.
1868	3 2 3	2 9 3
1869	3 11 7	3 6 1
1870	4 15 3	4 4 11
1871	4 11 2	6 14 6
1872	3 7 3	2 13 9
1873	2 8 2	1 15 9
1874	3 8 4	2 14 8
1875	3 2 11	2 11 1
1876	3 5 10	2 15 4
1877	4 3 8	3 9 3
1878	4 1 11	3 10 9
1879	3 11 9	3 2 9
1880	4 12 4	4 5 7
1881	4 1 0	3 12 6
1882	2 14 2	2 11 6
1883	3 3 11	3 1 3

III.

	Rs. A. P.	Rs. A. P.
Five years, 1868-72 ...	3 15 11	3 6 6
Ditto, 1873-77 ...	3 5 11	2 13 3
Ditto, 1878-82 ..	3 14 8	3 8 7

W J R g. No 5217C—900—11-8-84.

In submitting these suggestions for giving legislative effect to the main principles which I understand to have been finally accepted by the Secretary of State and the Governor-General in Council, as the basis of legislation between Landlord and Tenant, I must repeat what I wrote with my note of 19th May 1881:—

"I have not considered myself bound to the opinions which I expressed as President of the Commission for the Amendment of the Rent Law.

"The points for the consideration of the Commission were so multifarious, the differences of opinion among the members were so numerous (ranging from a gradation of shades to direct contrast), and the difficulty of getting the Report completed before the time at which the members must be scattered was so great that on many points I preferred to give my voice according to the opinion of the moment rather than prolong discussion, being satisfied that the point being so brought forward would meet with full further discussion before the time came for taking action on it; and that I myself should have an opportunity of giving further consideration to it, and of expressing my ultimate opinion after having had the advantage of hearing it so discussed."

The discussions which have followed the Report of the Rent Law Commission would have been of little value, if they had not led to more matured opinions being formed on some points.

The information which has been required from the districts by the Government circular of the 24th May will be of much importance towards coming to a conclusion on many points which are still open to discussion; if as many months had been allowed for the collection of it as weeks have been given, the result would have been a most valuable collection of facts.

As I am leaving the country in a few days, I have been obliged to write without the advantage of seeing the reports which the Commissioners of divisions may send up. I have therefore passed over points of which the decision must depend mainly on the information which those reports may contain.

The 26th July 1884. H. L. DAMPIER.

BENGAL TENANCY BILL.

NOTES ON THE SECOND EDITION PUT FORTH BY THE SELECT COMMITTEE OF THE LEGISLATIVE COUNCIL OF THE GOVERNOR-GENERAL.

By Mr. H. L. Dampier.

CHAPTER I.

Preliminary.

Section III (2).—To be uniform with (2) and (4), this should run "means a person or a number of persons" with the necessary consequent alterations of wording.

(7).—A is let into occupation of certain land as a holding in the year 1880, without (or even with) a written lease. In 1884 he is let into occupation of other parcels of land, by the same landlord, on precisely the same conditions;—is the land acquired in 1880 and in 1884, respectively, all held "on one set of conditions," so as to constitute one "holding" within the meaning of the definition? or does A hold two holdings, that of 1880 being held under one "set of conditions" and that of 1884 under another although similar "set of conditions"? The question may involve important practical issues.

(14).—After the words "to discharge" in the 3rd line insert "any of."

CHAPTER II.

Classes of Tenants.

Section V.—As suggested under (*a*) in paragraph 4 of the letter of the Government of Bengal, Circular No. 3TR, dated 24th May 1884,* the limitation of the meaning of "raiyat" in sub-section (3) of section 5, read with the description of "tenure-holder" in sub-section (1), leaves room for a contention that no person who holds directly under a rent-free holder can claim to be a raiyat unless either—

* Which will be referred to hereafter as the Government Circular.

(*a*) the rent-free holder is a "proprietor," *i.e.*, the rent-free lands which he holds have been admitted by the Collector to registration as a revenue-free estate; or

(*b*) the rent-free holder can be shown to have acquired the right to collect rents from the proprietor of the estate or from a tenure-holder.

Instances are numerous in which a rent-free holder could not be brought under either of these categories. In many cases the origin of his rent-free holding could not be shown; all that could be shown being that he has paid no rent for a number of years which preclude any landlord now claiming rent from him. In order to meet the difficulty suggested in the Government circular and to avoid excluding the immediate tenants of such rent-free holders from the legal status of a "raiyat," I would amend the description of "tenure-holder" in sub-section (1) of this section by inserting after the word "rents" in the fifth line the words "or who not being a proprietor enjoys such right."

(4) (*c*).—For the reasons given in my remarks below on section 37, I would make this clause run as follows:—

"(*c*)—the character of the tenancy as originally acquired, that is to say, whether, from the character of the tenancy as originally created, it can reasonably be inferred that the intention of the landlord and the tenant was that the latter should cultivate the main part of the land as specified in sub-section (2) or that he should collect rents from tenants already on the land or from tenants whom he might in future settle on the land."

(5).—On this sub-section the Government circular asks "(*b*) whether the presumption is, with reference to existing practice, a fair presumption, and if not fair, what presumption of the sort would be fair."

1. If the object of the question is to ascertain whether according to the existing practice a landlord ordinarily recognizes as a tenure-holder a tenant who, not being described as such in any written lease, sub-lets a part or even the whole of his holding of above 100 bighas, the answer will certainly be in the negative. There is in practice no limit to the area of the holdings which landlords recognise and treat as raiyats' holdings; and not only so, but there is no limit to the extent of the holdings in respect of which the tenant accepts and indeed claims the character of a raiyat, notwithstanding that he has sub-let by far the greater part of it.

2. The law as it now stands attaches certain advantages to a raiyat's holding over a tenure—

(*a*) In all estates—the protection against enhancement, except under specific conditions very difficult of fulfilment, which the law has given since 1859.

(*b*) In temporarily settled estates and in estates the property of Government—the immunity which the tenant who is recognised as the statutory raiyat enjoys from the liability to have the rents fairly payable to him by his under-raiyats authoritatively determined and recorded by the settlement officer under the Bengal Settlement Act* in a record which is binding on the parties unless it is modified by a Civil Court in a suit which must be instituted within four months of the publication of the jamabundi; also immunity from the liability to have the rent payable by himself calculated by the deduction of a percentage allowance from the amount of rent payable to him. These liabilities attach to a tenure holder under section 7 of the Act.

* Bengal Act VIII of 1879.

3. These advantages are keenly appreciated; the right to be recognised as a raiyat is eagerly pressed before the settlement and revenue officers; and the dispute is now being carried to the Civil Courts with increasing frequency. The zemindar does not usually move actively in the matter; as evinced by the recent literature of the tenancy question bill, whatever the reason may be, the landholders, broadly speaking, prefer that their immediate tenants be classed as raiyats.

4. Instances, however, are not wanting in which the zemindar has been a party to the contest.

For example, in a Nuddea case in which the tenant insisted on his right to be recorded as a raiyat with an occupancy-right in a holding which he had derived from an indigo concern to which it had been let more than 12 years before the contention arose, and by which it had been partly held in direct cultivation and partly sub-let to under-tenants year by year, the zemindar contested the right and denied that the holding was anything more than a farming or contract tenure.

Again in a recent case from Midnapore (Hooda Bheteah), the cultivators claimed to be recognised as the statutory raiyats, on the ground that their immediate landlords (intermediate between them and the proprietors), who had been recorded and accepted as the "raiyats" in the proceedings of the previous settlement, had disappeared. The proprietors opposed the claim on the ground that when their immediate tenants, the recorded and protected raiyats of the former settlement, disappeared, the proprietors themselves stepped into their shoes as "occupancy raiyats," which position the proprietors had attempted to make good by designating the actual cultivating raiyats "korfa raiyats" in the receipts given to them for rent.

5. Generally, however, the parties who take an active part in these contests are, on the one hand, the tenant who holds from the proprietor of the estate (be the proprietor Government or a private individual), and on the other hand, the sub-tenants of that tenant; for if the former succeeds in establishing his recognition as the statutory raiyat, the latter lose all the advantages of protection against enhancement and by record of rights; whereas if the latter can succeed in dislodging the former from the position of raiyat, and pushing him up into that of tenure-holder, they themselves step up into the position of raiyat with all its advantages.

These contests have been more frequent and more prominent in the eastern districts of Bengal and in Midnapore, where the revenue settlements have been more numerous than elsewhere, for it is evident that the question must be brought to issue by the settlement officer's proceedings under the Act of 1879.

6. It may therefore be confidently anticipated that the answer to the question now put by the Government as regards section 5(5) will be that the presumption of a holding of 100 bighas, even if mostly sub-let, being a tenure, is *not* in accordance with the existing practice as between landlords and tenants; and that no presumption to be in accordance with the existing practice can be drawn either from area or from the fact that a part or the whole of the holding is sub-let.

7. But I have always pressed for the necessity of a legal presumption of the sort, and I made to the select committee the suggestion which section 5 (5) embodies, not at all on the ground that 100 bighas or any other arbitrary area they might adopt would fairly represent the existing practice, but on the ground that it was impossible to deduce any presumption from existing practice; that before taking a doubtful case into Court it was impossible for the parties, however reasonably and amicably they might be inclined, to make any probable anticipation as to what the decision would be, whether tenure or raiyat's holding. I again urge that for the sake of preventing litigation, it is of the utmost importance to provide at least an artificial legal presumption which shall serve as an indication (to parties who wish to avoid litigation) as to what the probable result of a suit would be. If this artificial presumption cannot be founded on existing practice, it may at least be founded on the general characteristic which the law recognizes as distinguishing a tenure from a raiyat's holding.†

† I am now discussing the question of legal presumption or no legal presumption. But from my remarks under section 37 it will be seen that fuller consideration has led me to advocate that an absolute legal declaration shall be substituted for the mere presumption of this section.

Section 5 lays down that the designation tenure-holder implies primarily the idea of the acquisition of the right to collect rents, while the designation raiyat implies primarily the idea of the acquisition of land by a tenant for the purpose of cultivating it by himself, or by members of his family or by hired servants. It seems to me that if the holding as originally

created exceeded 100 bighas, the law may reasonably assume that it was created with the full expectation of both parties that the lessee would convert himself into a rent-receiver or tenure-holder as soon as possible by inducting ryots to the land. Indeed, in this view the limit might well be put far below 100 bighas; and the lower it can safely be put, the better it will promote the object of protecting the "real cultivator" and discouraging the non-cultivating purchaser of occupancy holdings.

8. On the third point (*c*) of paragraph 4 of the Government circular, see my remarks below on paragraph 37 of the Bill.

CHAPTER III.

TENURE-HOLDERS.

Enhancement of Rent.

Paragraph 5 of the Government circular points out that the conditions such as are imposed in respect of the enhancement of the rent of raiyats are not applied to the rents of tenure-holders. No such conditions have hitherto been imposed and I do not know that experience has suggested the necessity of legislation in this direction for the protection of tenure-holders.

Section VI (1) (*b*).—The concluding words "and that the lands are capable of affording it," although a reproduction of the existing law, seem to me to be surplusage in view of section 7 (3), which provides that the Court shall not leave to the tenure-holder as profit less than ten per centum of the net rents.

Section VII (1).—Similar tenures may be and are held at different rates, so that it may happen that no rates will fulfil the requirements of the word "customary" according to the views of individual presiding Judges. I should prefer "up to the highest rates which are prevalent as rates usually paid" or "commonly paid" by persons holding similar tenures in the vicinity.

(2)—"Where no such customary rate exists."—I would strike out these words, leaving sub-section 2 as an alternative to sub-section 1, optional to the landlord,* for the reasons given in the following extract from Mr. Westmacott's report on the first bill.

"A number of tenures are created at the same time, on the same rates of rent, covering a considerable area. The time comes when enhancement is legitimate and a landlord in the centre of the said area proceeds to enhance. He cannot enhance beyond the customary rate, and he finds that every tenure for miles round is paying at the same rate, so that he is precluded from enhancing. If no landlord can enhance until the majority of his neighbours have enhanced, it is clear that enhancement can never be commenced, and therefore the right of enhancement becomes a dead letter."

(3) (*a*).—I would mention bonus paid on creation of the tenure as a circumstance to be taken into consideration in fixing the rent.

Section VIII.—In order to prevent mistakes from reading this section alone, I would introduce words mentioning that this limitation does not apply to cases in which it is shown that the area of the tenure has been increased by the addition of land to it, and referring to the subsequent saving clause to that effect. (Section 66). Some care is required in the wording so as to prevent nominal increases of area owing to more precise measurements being taken as actual increases of the land to be assessed.

But apart from increase of area there will be other cases in which the limit of double rent will be out of place. For instance, a sudden change in the course of a river converts the soil from unproductive sand to fertile alluvial deposit, a new civil station is established, a bridge is built, a railway is opened with a station which has the effect of suddenly increasing the letting value of the adjacent land tenfold. It is not reasonable in such cases to debar the landlord of the tenure-holder from the immediate enjoyment of his fair share of the abnormally increased profit. The argument based on interference with the standard of comfort which the tenant has attained under the influence of his gradually increasing profits and stationary rent does not apply to such cases.

Section X.—I would assimilate for tenures and raiyats' holdings the period within which an enhancement shall not be followed by a second enhancement. The section should be worded so as not to cover the case of tenures of which the characteristic is that rent is adjusted from year to year, or from time to time, according to measurement of the lands of the holding which are actually found cultivated. Section 99 (2) *b* saves the right of measurement only; not that of demanding more rent for more area ascertained.

Section XIV (1).—I would introduce words making clear that the landlord may exercise this right of demanding security at any future time, if he has not done so immediately after a transfer; also after a devolution by inheritance, even though he did not demand security from the predecessor in title.

Section XVI (2).—It should be specified at whose expense the notice to the landlord of the sale shall be served.

The landlord's application to the court for the (perhaps petty) fee will as the law stands require a stamp, unless a special executive order of the Governor-General in Council is passed exempting it from stamp duty.

Section XVII (2).—After the word rent in the fourth line insert " or cesses."

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.]

Section XXIII.—1. In the matter of making a distinction between the incidents to be attached to holdings which are proved to be genuine mukarrari and those of which the mukarrari character is the creature of the twenty years' presumption of Act X of 1859 (treated of in paragraph 7 of the Government of India's letter), I agree with the Hon'ble Mr. Gibbon, whose objections as recorded in his dissent seem to me to be of much weight. To mukarrari holdings *proved* to have been created by pottah or to have been held at a fixed amount or rate of rent since the permanent settlement I would attach the privileges of a tenure,—free sale without right of pre-emption to the landlord, and right to convert the land to any use. But to holdings to which in the absence of proof no mukarrari privilege would now attach without the twenty-years presumption of the law of 1859, I think that the immunity from enhancement of rent is a sufficient concession. In all other respects I would leave these presumptive mukarraries in the same category as occupancy holdings; at any rate I would leave the right of pre-emption to the landlord, if only to avoid the disputes which would otherwise be likely to spring up as pointed by Mr. Gibbon.

2. The consideration of the twenty years' presumption is again invited by Government. I have given the question all the consideration of which I am capable, and I find no reason to depart from the views which I expressed at length in the report which I submitted to Government on the 19th May 1881 on Mr. Reynolds' draft bill. I there, after examining the question, said, in concurrence with the views then held by Mr. Reynolds, that on the whole I would accept 1839 as the starting point for the presumption, as being the most likely to bring the effect of the presumption into accord with the actual rights which it assumes.

CHAPTER V.

OCCUPANCY RAIYATS.

General.

1. I understand the avowed object of this part of the scheme of legislation to be to exercise that power of interfering to regulate the relations between the zemindar (or the tenure-holder who has acquired a portion of the original zemindar's rights) and his raiyats, which was expressly reserved to the Government by the declaration of 1793.* The necessity for interference in support of the raiyat has arisen from the growth of circumstances, of which the chief is the increase of pressure of population on the soil without a corresponding development of sources of livelihood other than husbandry. Such circumstances have tended to weaken the position of the raiyat as against the landlord, and under them the raiyat class has not been treated with the good faith and moderation which was expressly stated to be required from the landlord class as a fulfilment of its part of the engagement of 1793.

* I may call attention to the fact that the idea of the support given by Government to the zemindar's influence being limited by considerations of the raiyat's welfare is expressed in the Firman given by the Emperor to Rajah Madho Singh, of which the Maharajah of Durbhunga has annexed a translation to his recorded dissent to the Bill. The orders there given to the officers of the Nizamut are—" to keep him in possession of the zamindari rights, cause his all demands to be paid up, act according to his advice if the same be loyal and tending to benefit the raiyats."

2. The provisions as to occupancy right and transfer, as they stand, seem to me to be open to the objection that, while trenching very materially on the strength which the landlord's position has actually acquired, they do not in a corresponding degree strengthen that particular class which really requires support—the local peasantry. They do not in fact strengthen, as against the landlord, any class of the community which is capable of definition.

This chapter has the effect that it will be open to the whole world except to the immediate landlord to acquire by purchase or otherwise to hold certain rights described as occupancy rights in a given piece of land. Such rights may be acquired and held by distant non-agricultural capitalists; by the zemindars of estates adjoining that within which the land lies, if the land is included in a tenure; by the zemindars, resident or absentee, of the estate itself; by the holders of tenures above the lowest under-tenure which includes the land.†

† In answer to the argument that such men will be tenure-holders, not raiyats, it is evident that any neighbouring zemindar or tenure-holder may, through the agency of his local establishments, cultivate the purchased holding under conditions which shall strictly comply with any definition of a "raiyat" which may be devised, and so avoid turning himself into a tenure-holder It would not suit the distant capitalist to do so, unless he were to acquire sufficient land in the neighbourhood to make it worth while to keep up a local establishment

3. Not only does the scheme trench on the landlord's position for the benefit of others than the class which only requires strengthening—the local peasantry—but it seems to me that it is calculated to weaken the position of that class as against the whole world. It is not denied that, even under existing circumstances, the non-resident capitalist has been to some extent attracted to acquire the right of occupancy, which is against the avowed object of the legislation. The attraction to him to compete with the local peasant for such holdings will evidently be increased in proportion to the additional value which they will acquire under the more substantial protection and security afforded by the law.

4. That scheme would commend itself to me, which, while it interfered with the over-strong actual position of the landlord to the extent only which is required for the interests of the too weak local peasant class, should strengthen the latter class in a corresponding degree, not only against the landlord, but against the whole world of outsiders. Impossible as the perfect attainment of that object must be, my purpose would be to adopt measures which should tend, as far as possible, towards the object of securing to the local peasant the stock of land which is within an accessible distance for his superintendence of actual cultivation.

5. In drawing the following distinctions between a "resident" and a "non-resident raiyat," I use "resident raiyat" in the broad sense of one to whom attaches the idea of residence within such a distance of the land in question that it is accessible to him for the purpose of superintending the cultivation of it.

6. *To the non-resident raiyat I would confirm, as is done by section* 24, *the rights which he has actually acquired under the provisions of Act X of* 1859 *or by custom.*

I am not in favour of allowing any further acquisition of occupancy rights by non-resident raiyats. If it be considered objectionable to recede from the principle of Act X, even for the future, then I would not go a step beyond that Act in respect of rights to be hereafter acquired by "non-resident" raiyats. If it must be, let them acquire a right of occupancy in the very lands as to which they may hereafter complete the tenancy of twelve years, but nothing more.

7. *I would allow only to the resident raiyat the full privileges of a "settled raiyat," which this Bill creates.* Notwithstanding all that has been said to the contrary, I do not doubt that this would be in accordance with the general idea which prevailed at the close of the last century* (and indeed up to the middle of the present century) to which it is desired to revert with such modifications as altered circumstances require; and it seems to me to be in strict accordance with the views expressed in paragraph 10 of the Secretary of State's despatch of 17th August 1882, and the suggestion made by him in paragraph 11 (reading the second clause as a continuation of the first), as to the principle which should be adopted as the basis of legislation.

* It has been argued that the old paikasht raiyat was as secure in his holding as the khudkasht. However that may be, such discussion must end somewhere. In paragraph 10 of the despatch the Secretary of State has distinctly objected to a proposal which "annuls the distinction deeply rooted in the feelings and customs of the people, not only in Bengal, but in most parts of India, between the resident or permanent and the non-resident or temporary cultivator." I do not think that any one has been found to contend that a non-resident raiyat either has or ever had potential rights founded on custom, on law, on reason, or on sentiment in any of the village lands outside of the fields which he actually holds.

8. What, then, should be the conditions required to bring a raiyat within the precise definition of a "resident raiyat" in respect of any land?

This brings me to the consideration of the question (*a*) proposed in paragraph 7 of the Government Circular, which I reproduce in the margin. I go very much further than is here suggested. I do not understand that the real question lies within the narrow limits suggested in the Government Circular, whether "any material or practical loss would unavoidably result to the zemindars by retaining the definition as it stands;" but I understand the question to be whether there is any justification on the ground of the "just rights of the raiyats" or of administrative necessity for a new provision of the law so unpalatable to the landlords generally as that a raiyat who has held lands in one part of an estate for twelve years shall in virtue thereof be vested at once with occupancy rights in any land which he may subsequently acquire in any part of the same estate, that is, of the lands which the zemindar holds subject to liability for the same unit of land revenue. As the Bill stands, this privilege of immediately acquiring occupancy rights in land subsequently acquired by the raiyat is not limited by the fact that the lands so subsequently acquired are at many miles distance from the first holding; or by the fact that they are held under a tenure-holder landlord, who has no connection with the tenure-holder under whom the first holding is held.

(*a*) "Should the capacity of the settled raiyat to hold, on an occupancy title, land into possession of which he has been let, extend over an entire "estate," or should it cover only a portion of the "estate" which the latter extends over a large tract of country, or into more than one district."

* * * *

"On point (*a*) you will consider whether, with reference to the circumstances of the districts in your charge, any material or practical loss would unavoidably result to zemindars by retaining the definition as it stands; and if you are of opinion that such loss would result, then you are requested to state whether that loss would be obviated without injury to the just rights of the raiyats by limiting the portion of the "estates" within which settled raiyats taking lands would at once acquire occupancy rights, to the district or even to the sub-division of a district."

9. The question now put in the Government Circular, equally with the arguments set out in the Government of Bengal's report on the first Bill,† seems to ignore the fact that, at any rate in the large estates of Bengal, the landlord directly concerned with the raiyat will usually be not the proprietor of the estate himself but the holder of one patni or other tenure out of many into which the estate is broken up. It would be a poor consolation to the darpatnidar of village A in the east of any district, or of any sub-division of a district, to be told that Z acquires

† Paragraph 11.

an occupancy status as his tenant in virtue of Z having held some lands for twelve years in village B, which is held in patni by some other person, and which is somewhere near the western limit of the district or sub-division, the only bond of union beyond villages A and B being that they are portions of the same revenue-paying zemindar's estate. Under such circumstances the argument in the Government of Bengal's report that the raiyat who goes 20 miles from his village to seek land "will still be well known to the landlord" loses its force. Moreover, the raiyat who can take such advantage of his being a "settled ryot of the estate" will, presumably, for the reasons given in the Government report, belong to the very class which it is not the object of the Bill to encourage—the capitalist as distinguished from the peasant. For the reasons given by Mr. Beames, Mr. Monro, Mr. Westmacott, and others in their reports on the first Bill (*vide* abstracts printed at pages 64 and 65 of volume 1 of the Report of the Government of Bengal on the Bengal Tenancy Bill, 1883) it is not enough that the raiyat should be a resident on the same estate. He should, subject to what follows, be a resident of the same "village."*

* The argument applies equally to the Bill as it stands drafted, if "settled raiyat" is substituted for "resident."

10. Again, as one village often contains lands belonging to two or more estates, if the idea of acceptability of the settled raiyat to the landlord is to be followed out, it will not be enough to make residence within the same village the only condition required; the "resident raiyat" must reside both within the village *and* within the estate to which the lands in question appertain.

11. Then arise such objections as that the village is no longer the same unit as it was; but I adhere to my former opinion which has been adopted in section 27, that the survey village is the only general village unit which will now work, with the reservation of a power to the executive of providing for exceptional cases.

12. *I would therefore define the resident raiyat to be one who fulfils the following two conditions in respect to any given holding:—*

(1). *Residence within the estate to which the lands belong, or within any one estate which has a joint interest in the lands in question.*†

† This to meet the case of lands which belong jointly and without distinction to two or more estates.

(2). *Residence within the same village, or within so many miles of any part of the holding.*

13. In preference to the scheme as it now stands, I would even abandon the first of these conditions, thus adhering to the principle of strengthening the local peasant, although at the expense of the principle of acceptability to the landlord; as a fact, in the case of the raiyat's new holding being included in a tenure, the condition of residence in the same estate will absolutely be of no benefit, sentimental or otherwise, to the landlord, *i.e.*, the holder of that particular tenure.

14. If the village is too contracted an area, a limit of distance from the lands might be declared, residence within which should have the same effect as residence in the same village, the distance being arbitrarily fixed in accordance with the general idea that it should admit of personal superintendence of the cultivation by the raiyat.

15. If the privileges of the settled raiyat of the Bill had been restricted to such resident raiyats only, I should not have objected to the term of residence and holding which confers the "occupancy right with right of transfer" being reduced even to three years. The Secretary of State's despatch, however, concludes this discussion.

16. But if the full privileges of settled raiyats were allowed to such residents only, it would, to my mind, be unreasonably incongruous that the raiyat who to-day acquires a certain status and certain rights by the essential condition of residence should be able to transfer those rights to-morrow to one who does not fulfil that condition.

17. Under the clauses of the Bill as they stand it is easy to foresee that in a short time many villages will be found in which all the lands are held in raiyati tenancy by non-residents, or by the landlord who has acquired them in the exercise of his right of pre-emption, not an acre being left for the resident peasant to occupy as a raiyat.

It seems to me no less desirable to protect the resident peasant class against the absorption, by invaders, of land which is within reasonable cultivating distance than it is necessary to protect the class against their immediate landlords.

18. *I would therefore restrict transfers of the occupancy rights of a settled raiyat as described in the Bill to persons who comply with the conditions of residence which go to constitute a "settled raiyat," and I would give the first right of pre-emption to such raiyats;*‡ *where neither the resident raiyats nor, after them, the landlords avail themselves of this right, I would let the transfer to a non-resident raiyat carry the occupancy rights of Act X of* 1859, *and nothing more.*

‡ *Vide* paragraph 20 below.

19. If, after becoming a settled raiyat, the raiyat were to leave the village and reside elsewhere, he should lose his rights as a "settled raiyat," but retain his right of occupancy in the particular lands which he might happen to hold at the time of leaving the village, *i.e.*, he should take the position of a non-resident occupancy raiyat under Act X of 1859.

20. My object being to secure the stock of land to the resident peasant, it follows that I would not give the right of pre-emption to the landlord when the proposed transfer, in whatever shape, is to a resident raiyat. But I would go much beyond this. If transfer to a non-resident is allowed at all, I would give the first right of pre-emption in the case of such proposed transfer not to the landlord but to any resident raiyat or raiyats jointly, substituting some form of general local notice by the intending seller for the notice to the landlord. In case of competition, the highest bidder to have the preference. In case of a judicial price

being fixed for the holding, such price would be the upset price for the bids of the resident raiyats as against one another.

If no resident raiyat chose to exercise the right of pre-emption at that price, the landlord might be allowed to come in with his right of pre-emption as given by the Bill.

21. Such provisions would avoid the objection of allowing absentees who have the status of cultivating raiyats in the eye of the law, but who may actually reside at a distance of many miles from the lands in question (which they may cultivate through korfa or under-raiyats) to acquire over lands which are actually desired by the local resident raiyats, a privilege and status, of which the primary idea is residence in close proximity to the lands cultivated.

22. With reference to paragraph 15 of the Lieutenant-Governor's report on the first Bill, I submit that the restriction of the new status of a "settled raiyat" to residents, and the offer to such raiyats of the right of pre-emption, would be a valuable check on the "accumulation of occupancy rights in the hands of non agriculturist" capitalists, and would tend to postpone the state of things anticipated in the extract there given from the Statement of Objects and Reasons. The resident village mahajun or money-lender might accumulate such rights within his own circle of residence; but he is very commonly a well-to-do raiyat of the village.

23. To the objection that such restrictions would limit the outgoing raiyat's market for the sale of his holding, I reply, *first*, that they would not do so to any greater extent than the Bill's scheme of securing the right of pre-emption at a judicially fixed price to the landlord; and, *secondly*, that in return for what he gets under this legislation, the raiyat in the particular character of a seller which is now expressly conferred on him by law, may well be called on to forego something which might possibly be given to him.

Section XXXI (*f*).—1. Accepting the views expressed by the Famine Commissioners in the passage which the Lieutenant-Governor has quoted with approval from their report,* I should consider the declaration of the right of transfer by law to be good for any districts of Bengal in which I was satisfied that such a declaration would have the effect of accelerating a process which had made considerable progress in establishing itself unassisted by law. In such a district the declaration would at once do away with the state of uncertainty leading to litigation which might otherwise prevail for years. But I do not think that anything which has yet been written is conclusive regarding the spontaneous growth of the custom of private transfer of occupancy holdings without reference to the landlord† to an extent which would fulfil the test proposed by the Famine Commissioners. The local reports which were submitted in connection with Mr. Mackenzie's Bill of 1877, that such a practice has made considerable way towards establishing itself in many districts, and indeed this is not denied. *The local enquiries ordered by paragraph 8 of the Government Circular under clause (f) of section 31 will, I think, give general satisfaction, if the legal declaration of the right of transfer is made to depend on the result district by district, or according to grand divisions of the province.*

* *Vide* page 14 of Government of Bengal's report to the Government of India on the first bill.

"Though, on the whole, we regard the general concession of the power of sale of these rights to be expedient, and ultimately almost unavoidable, the immediate course to be followed by the Government must no doubt be to a great extent governed by local custom. Where the custom has grown up, and the tenants are in the habit of selling or mortgaging their rights in land, it should certainly be recognized by the law; but where it has not, it may be questioned whether the law should move in advance of the feelings and wishes of the people."

† Nothing but the closest analysis of the cases represented by the figures given for voluntary transfers would be conclusive on this point. To the number of sales at the instance of creditors other than the landlords I attach no weight as indicating the deliberate acquiescence of the landlord class. The mere fact of the sale being held by a court would carry with it a fictitious appearance of right, which in the state of knowledge of their rights which existed before the discussions of the last few years, might well have tended to deter landlords from questioning or even doubting the legal propriety of such sales. As to sales for arrears of rent at the instance of the landlord, I can well conceive that it never occurred to the landlords of Behar or of any backward district that such sales implied a right of transfer without their consent.

2. But even for districts to which the right of optional transfer is not extended, I would declare the right of the landlord to bring an occupancy raiyat's holding to sale for arrears of rent, if he elects to do so, instead of ejecting the defaulter. In respect of such sales I would uphold the distinction in favour of resident raiyats which I have advocated, *i.e.*, if a resident raiyat became the purchaser he should acquire the occupancy-rights of a "settled raiyat" as created by the present Bill; but a non-resident purchaser should acquire only the privileges of an occupancy raiyat as defined by Act X of 1859 on the very land which constitutes the holding at the time of the sale. Although I view with no favour the competition of these outsiders with the resident raiyats, their competition, even on such unequal terms, would act as a wholesome check against combinations among the resident raiyats, and even between the resident raiyats and their landlords, to keep down the price bid, to the disadvantage of the outgoing raiyat.

3. But whatever conclusion may be arrived at for Bengal proper, it appears to me, with the majority of the Behar Rent Commission, that the circumstances of the Behar districts, as already before us, call for serious consideration whether the legal declaration of the right of transfer of occupancy holdings generally would not be mischievous there.

As a seller the Behar raiyat in his present low condition will not be able to offer the same resistance as the stronger raiyat of Bengal to passing temptations to make improvident transfers of his right. As a purchaser he has no money with which to acquire holdings. I should think that his present condition bears more resemblance to that of the raiyats of the Deccan and of Sonthal Pergunnahs (in which the Government of Bengal's letter says that "free sale has had evil results on a thriftless peasantry") than does the present condition of the raiyats of the Bengal districts.

Then I anticipate that under the circumstances of the indigo districts, perhaps after a struggle on the part of the stronger landlords to exercise their right of preemption, the right of occupancy in the lands which are desirable to the planter will rapidly pass into their hands. I mention this as a result which, whether it be considered desirable or undesirable, should be foreseen.

And I suppose that this or any other scheme which will enable the planter to get land by dealing directly with the raiyat without the interference of the landlord must be acceptable to the indigo-planting interest.

4. If the rights of a settled raiyat were made transferable to residents only, the planter could only acquire that right in lands within his own circle of residence; but his object of being able to deal with the raiyat without the interference of his zemindar (and this seems to me a desirable object) would, nevertheless, be attained, for he would get his lands as an under-raiyat, an arrangement which under these particular circumstances would not be open to the ordinary objections against underletting by raiyats.

5. *On the whole I would not make occupancy rights generally transferable in Behar otherwise than in execution of the landlord's decree for rent.* I have never been able to understand what inconsistency there would be in allowing such a limited transferability, and yet withholding a general right of transfer without the landlord's consent. The purchaser would of course know exactly what he was buying.

On the assumption that the scheme now embodied in chapter V will be adhered to, I proceed to remark on the sections as they stand.

Section XXVI (1).—In the Bill, as previously published, the *first* mention of a settled raiyat was in section 45 (1), to which the marginal abstract was "acquisition of status of settled raiyat." It might naturally be understood that the meaning of settled raiyat mentioned in the subsequent sections was to be looked for in the description given in this section as there placed; but in the Bill, as now published, additions and transpositions have been made, which seem to me to leave a doubt as to the scope of the term "settled raiyat."

It is true that the descriptive section, which was 45 (1) of the former Bill, remains as 26 (1) of the present Bill. Moreover, the marginal abstract is altered to "definition of settled raiyat." I presume from this (as well as from the result of the discussions between the Secretary of State and the Governor-General in Council), that the clause is intended to have the force of an exhaustive definition; but its wording does not necessarily carry that meaning; and the drafting and arrangement of the sections seem to me to be such that any person who had not read the correspondence between the high authorities regarding the proposed legislation might well understand that the purport of sub-section 1 of section 26 is not to give an exhaustive definition of "settled raiyat" but only to *extend* the definition beyond the ordinary meaning of the words "settled raiyat."

A "settled raiyat," it might be argued, is an intelligible expression, meaning a raiyat who has established or domiciled himself as a resident of the village or estate, which is a question of fact. Every raiyat so established will at once acquire rights of occupancy by the operation of section 25 (2) in all land held by him as a raiyat, without reference to the question of time. Section 26 (1) does not limit this obvious meaning of the term "settled raiyat," but extends it by bringing within its technical scope even certain non-residents, who would not otherwise have come within the ordinary meaning of the words. Such a non-resident shall, in the words of the clause, "be *deemed* to have become a settled raiyat of that village or estate."

This contention might be supported by pointing to the expression "deemed to have become" as being in itself extensive and also by pointing to the position of the so-called definition. A definition is ordinarily given before the expression defined is made use of, whereas the settled raiyat is mentioned for a substantial purpose in the section preceding the so-called definition of sub-section 1 of section 26.

The possibility of misapprehension should be removed.

Section XXVI (2).—As pointed out by the Maharajah of Durbhunga, it will be impossible for a landlord acquiring his estate or tenure by forced sale from a hostile predecessor to rebut the legal presumption here raised. The practical effect of the presumption would be to confer occupancy rights on every raiyat of an estate or tenure which is acquired from a hostile purchaser, except, indeed, on those who, under the other legal presumption of 20 years' holding at a fixed rent, become converted into mokarraridars. In ordinary cases the landlord should have no difficulty in rebutting the presumption if he keeps his papers properly; but it would be impossible to make a distinction in this respect between ordinary cases and the extraordinary cases mentioned above, without holding out an inducement to sales which should be apparently forced, but in reality collusive. *On the whole I would reject the presumption section* 26 (2) *from the Bill.*

(3).—If the words "or estate" were omitted, and the provision restricted to the "resident raiyat," I should approve of this as a very good section, in accordance with the essence of the occupancy status.

Section XXVII (6) and (7).—See remarks on section 96 below.

Section XXVII (*a*).—I do not understand the expression "including such outlying portions (if any) as appear from the map to belong to the village." There are plenty of outlying portions of estates* in the sense of plots of land which belong to the revenue-paying estate A, although they lie embedded among lands belonging to another estate B or C, and within the exterior boundary of a village or mouzah of which the greater part of the area belongs to estate B or C; but if any plot of land which is recognised as an outlying portion of village M is geographically situated within the external boundary of another village N, such outlying portion will not be shewn in the survey village map of M, as assumed in the section. The words about outlying portions seem to be unnecessary fine-drawing; at any rate such a section should not be adopted without consulting the Surveyor-General and ascertaining that it is in accordance with existing survey facts and practice.

And, according to the old recognised divisions, of pergunnahs.

(*b*).—What I have written above, if adopted, would render unnecessary any reply to question (*b*) in paragraph 7 of the Government circular.† I write now, however, on the assumption that the idea of "estate" will still be retained for the purposes of this clause.

† "Should the 'estate' within which such a right may accrue to the settled raiyat be of the extent it was 30 years ago, or at any more recent date.'

I can put no reasonably probable meaning to section 27 (*b*).

2. Two separate estates A^1 and A^2 are created in 1854‡ by partition of an original estate A.; and from that moment all connection between the two estates A^1 and A^2 ceases.§ A year later, or fifty years later, Z, a stranger immigrant raiyat, is let into a holding on estate A^1 by the proprietor or by any tenure-holder thereof. After 12 years he becomes a settled raiyat of estate A^1. On the strength of this, if he at any future time acquires land on estate A^2, he is then and there vested with the full status of occupancy raiyat in respect of such land, and in respect of any lands which he may in future acquire in the said original estate A; because, for the purposes of sections 25 (1) and 26 (1), the area which was comprised in the parent estate A (of which the present estates A^1 and A^2 would have formed a part if no partition had taken place) is for all time to be "deemed a single estate!" This result will follow although the raiyat Z did not appear on the scene till long after the parent estate A had been broken up into two separate estates; and this operation of the section would continue for all future time, however many years may have elapsed between the partition of estate A and the appearance of Z on the scene. I may venture to assume that nothing so extreme as this is intended by any one even in connection with this measure. Perhaps the idea intended to be expressed in this clause is that—

‡ The applicability of these remarks will not be affected by substituting any other date for 1st of January 1853.

§ Often it happens that the lands of the two estates are not even geographically intermixed or adjacent to one another. The original estate A may have consisted of 20 villages lying in several blocks, of which so many blocks are allotted to estate A^1 and so many to A^2.

"Notwithstanding that a parent estate may have been divided into two or more separate estates by paritition after a date (to be specified in the Bill) any person who was a raiyat on the parent estate at the time of such partition|| shall, on acquiring any further land as a raiyat's holding on any part of the area which originally constituted such parent estate, at once acquire over such lands such rights and status as would have accrued to him over such lands if the parent estate were still a single estate."

|| And his successors in title.

3. But I should object to such a provision. The vexatious and expensive proceedings of partition are undertaken for the express purpose of disrupting the connection between the proprietors of the two or more estates created. Presumably the partition originates from the joint proprietors not being able to get on together amicably: probably some dispute has arisen during the progress of the partition which has widened the breach. The parent estate having been broken up into the separate estates A^1, A^2, and A^3, the only result of such a provision of the law will be that the proprietors of A^1 and A^2 will on no account let any raiyat of A^3 into any holding on their respective estates. One of the great defects of the scheme of the Bill—perhaps an unavoidable defect as far as single estates are concerned—will be unnecessarily extended beyond the limits of a single estate, *i.e.*, the inducement which it holds out to a landlord who is opposed to the right of occupancy to give preference to a stranger, as a tenant, over the person for whose protection the clause is designed.

Section XXVII.—The explanation of the section given in paragraph 9 of the Government of India's letter is as follows :—

"The only remaining restriction which affects the acquisition of occupancy rights by the landlord is that in section 28, which declares that the occupancy right so acquired merges in the superior right of the landlord. It allows the accrual of occupancy rights by the lapse of time to the new tenant, prevents the legal complications which would arise from the co-existence of different interests in the same person, and merely affirms what appears to have been assumed by the Judicial Committee of the Privy Council, in the case referred to in Mr. Justice Field's note on this subject, to be the existing law. The section, it will be noticed, applies whether the landlord is the zemindar or a tenure-holder.

This explanation of the Government of India makes it clear that the purchase by the landlord has the effect of raising the late under-raiyats of A to the status of non-occupancy raiyats; this should be clearly expressed, as the section stands drafted, read with section 5 (2), there is nothing in it which necessarily changes the status of the former under-raiyats to that of raiyats when the landlord acquires the interest of the raiyat who was landlord of the under-raiyats. These *ci-devant* under-raiyats cannot be said to have "*acquired*" their land at that juncture so as to bring them within the scope of section 5 (2).

If it is so extended it should be expressed that not only does the occupancy right become extinguished in the event of purchase of a holding by the landlord, but that the character of a raiyat does not pass to the landlord as against any tenants who held under the late raiyat, or against any who may be admitted by the purchasing landlord.

Again in sales for execution of decree under section 183, the purchasing landlord will take the late occupancy-holding with power to avoid all incumbrances, *i.e.*, under the definition of "incumbrance" in section 177(*a*), with power to avoid all sub-tenancies of the under-raiyats whom he finds on the holding; but if, instead of annulling any such sub-tenancy as provided in section 184, he remains quiescent, what is the status of the under-raiyat of the former occupancy-raiyat in relation to the purchasing landlord? Is he raised to the status of a non-occupancy raiyat by section 28? With reference to the above remarks I think the intention should be clearly explained in this section 28. To become a raiyat is certainly no right of under-raiyat which would be saved by the saving clause of section 28.

It will probably be wise to provide that every person holding land which is not khámár directly under a proprietor or a tenure-holder, otherwise than as a tenure-holder, shall be deemed to be a raiyat.

Section XXIX (1).—In view of the circumstances of parts of the country in which the numerous joint proprietors of estates are themselves peasant cultivators, each holding and cultivating his own jote individually as against the joint body of proprietors, I do not think this section can properly be dispensed with.

Section XXXI (*b*).—Will be better discussed in connection with the improvement sections. I approve of the clause as it stands here as against the view that the occupancy raiyat may never make improvements without consent of his landlord.

(*f*).—I have given my general views on the question of transferability in my first remarks on chapter V. It remains to consider the result of the local enquiry which has been ordered by the Lieutenant-Governor in paragraph 9 of the Government circular.

(*g*).—From the time of the discussions of the Rent Law Commission, I have unwillingly arrived at and held the opinion that it is impossible to make any provisions of law which shall be effectual to stem the tide of custom, as strengthened by self-interest of the parties concerned in the matter of sub-letting by raiyats As in the case of other undesirable things which cannot be prevented, it is better to recognize and endeavour to control that which must exist than to ignore its existence. The recognition of the legality of sub-letting by occupancy raiyats is often urged as a leading objection to the proposed scheme of legislation, as if the legal recognition of such a right were an innovation: but this is not the case. As pointed out by Mr. Field in his note to article 40 of the Digest, the existing rent law* expressly recognizes such sub-letting.

* Act X of 1859, section 6; Act VIII B. L. C. of 1869, section 6.

(*h*).—The extinction of the right of occupancy in this case is open to the same remarks as I have made under section 28 above. The effect of the extinction on the position of any under-raiyats who may exist on the land at the time should be clearly declared.

Restrictions on Transfers.

The following remarks on the sections of the Bill are also subject to those above in which I have advocated a change in the general scheme of this chapter.

In districts in which the right of transfer is given, whether all or some, I would give no right of pre-emption to the landlord where the proposed sale is to a resident raiyat of the tenure. See the objections noted by the Maharajah of Darbhunga in his memorandum of dissent to the Bill.

Section XXXII (4).—If the raiyat drives his landlord to Court by a declared intention to sell to a non-resident purchaser to whom the landlord objects, how can it be considered equitable to allow him to "abstain from selling" after the Court has fixed a fair price? The raiyat should surely be bound to his intention to sell. This would check collusive proposals to sell at a fictitiously stated high price with the intention of harassing the landlord by the alternative of either accepting an undesired tenant or of going into court to get a judicial price determined.

At any rate, if the raiyat may abstain from selling after driving his landlord to Court, he should pay all costs of the proceedings.

Section XXXV (4).—The right of pre-emption in order to avert transfer to an undesired tenant by sale or mortgage having been reserved to the landlord, no good reason occurs to me for making a distinction in the case of gift.

The same remarks apply to the omission of section 55 of the original Bill by which the right of pre-emption was reserved to the landlord in the case of bequests by raiyats.

Restrictions on Sub-letting.

Section XXXVII.—In paragraph 4 (*c*) of the Government circular it is asked whether the conversion of the sub-letting occupancy raiyat into a tenure-holder is a workable provision, and also likely to secure the objects for which it was devised.

1. The first difficulty in considering this question lies in the words in lines 4 to 7 of section 37, "on being registered in a public register as a tenure-holder under any Act which may be passed for the rgistration of tenure-holders."

The working of the section depends much on the means which the contemplated Act may provide for compelling or encouraging registration.

2. With the disadvantages, both upwards and downwards, which the Bill attaches to the position of tenure-holders as compared with that of raiyats, it is not to be expected that any tenant who occupies the debateable ground will seek registration as a tenure-holder.*

* NOTE.—With reference to the doubts expressed in paragraph 6 of the Government of India's letter as to whether the advantages of immunity from distraint and from the exercise of the landlord's right of pre-emption which the sub letting raiyat will acquire by conversion to a tenure-holder are consistent with a scheme of which the object is to discourage sub letting, I am of opinion that the disadvantage of liability to summary sale for arrears will be looked upon as far outweighing the advantage of immunity from distraint. As explained below, I see no necessity for giving to the converted tenure-holder immunity from pre-emption as a rule.

3. It will therefore be necessary to look elsewhere than to the tenant himself for the initiative to the registration of any particular tenure. Can it be expected that the landlord will move to compel registration when more than half of a tenure is sublet?

The landlords now object to any person who holds as a raiyat being converted into a tenure-holder, because such conversion deprives the landlord (1) of the right of pre-emption of the holding, and (2) of the right of distraint. It may be that the privilege which this Bill combined with the proposed Tenure Registration Bill will give to landlords of bringing a tenure to sale for arrears of rent by summary application without antecedent decree will lead to a change in their views on this subject. If so, they might perhaps be inclined to avail themselves of any power which the law may confer on them for compelling registration of tenures; but then the onus of establishing by measurement and proof that more than half of a holding had been sub-let would fall in disputed cases on the applicant landlord. Assuming that a landlord desires to bring about the registration of a tenure which the tenant wishes to hold as a raiyat's holding—what will be the process?

4. If the area exceeds 100 bighas, and the whole or *any* part of it is sub let, the presumption will be against the opposing tenant, who may, however, "shew the contrary." That is, I suppose, he may shew that his status has been recognised to be that of a raiyat either by express contract, or by acts of recognition on the part of the landlord; or he may shew his status to be that of a raiyat by local custom,† *i.e.*, by the analogy of similar holdings in the district. Again, he may shew under section 5, sub-section 4 (*c*), that the nature of the right of tenancy as originally acquired was (in the words of that clause) a right to cultivate land, and not a right to collect rents, as the land was then unoccupied. His *right* to cultivate all the land may have been as undeniable as the *intention* of the contracting parties was evident that he would not do so, but would collect rents as soon as he could call them into existence.

Section 5 (5).

† Section 5, clause 4 (*a*).

5. From what I have written under section 5 (5) it will be seen that there will generally be no difficulty in rebutting the presumption arising from the area of the holding.‡ But even when the presumption from large area is rebutted, it will remain open to the landlord or other person seeking to convert the holding into a tenure by enforcing registration of the tenant "as a tenure-holder by any law which may be passed in that behalf" (as foreshadowed by section 37 of the Bill) to prove that the *quondam* occupancy raiyat has become a tenure-holder by subletting more than half of his holding.

‡ The presumption would easily be rebutted in respect of all the holdings which occupy the debateable ground in the eastern districts.

In an extensive tenure in which scattered patches of land have been sub-let the expense and difficulty of contested proceedings would be so great as practically to prevent the landlord from moving in the matter, even though he might otherwise desire to do so.

6. One other party only remains who can be at all expected to take the initiative. The sub-tenants of the raiyat who has become liable to conversion into a tenure-holder by registration would be much interested in compelling registration in order that they might step up into the vacant status of "raiyats," but the same difficulties and discouragements would meet them as would stand in the way of the landlord. *Unless therefore some means, which do not now occur to me, can be devised for bringing about the registration which is a necessary antecedent of section 37, I fear the section would be inoperative, at any rate in respect of the larger holdings to which it is particularly desirable to apply it.*

7. The objects of conferring the status of raiyat on the tenants of parts of these large raiyati holdings and of deterring non-agriculturists from purchasing such holdings, with the intention of speculating by immediately sub-letting to under-raiyats, must be sought in some other way.

If the advantages which the Bill gives to the landlords over tenures, as distinguished from raiyats' holdings, do not suffice to enlist the landlords on the side of such conversions, I think that the objections to conversion without the landlord's consent are entitled to consideration in cases in which the original lease was not inconsistent with the essential idea of a raiyat's holding, as explained in clause 2, section 5 of this Bill, viz. cultivation by himself, members of family, servants, &c.; but I would give less weight to them in cases in which the holding into which the tenant was originally let was such as by its extent excluded this essential idea. In such cases, the lessor never intended to create a holding with the expectation of its being cultivated, properly speaking, by the lessee. He never intended that it should be a raiyat's holding except in name. He intentionally created what was essentially a tenure for the purpose of saving himself the trouble, expense, and risk of attracting cultivating raiyats to the land and settling them on it, and for the purpose of securing a certain contract amount of rent payable by one substantial holder and secured by the value of the tenure,

rather than of himself taking the risk and trouble of collecting from genuine raiyats. In the eastern districts generally, and commonly enough in other districts of Bengal proper, the evident intention of the contracting parties was that the lessee, a small capitalist, should first incur the expense of embanking, and should then under-let in sub-contract leases, which intention was immediately carried out (see the typical case of Mobarakghona*).

* Annexure A to this minute. In that case I had to decide in accordance with the spirit of the law as it now stands, which happened not to be in accordance with my idea of what new legislation should enact.

8. I think that in such cases the Legislature may properly refuse to allow the landlord to take advantage of his having expressly applied the designation of raiyat, or of having allowed it to be ordinarily applied to a tenant who was let on to the land on a full understanding that he would use it in a manner which is inconsistent with the essential characteristics of a raiyat's holding, but which has all the essential characteristics of a "tenure."

The benefit of the misnomer may well be denied to both or either of the contracting parties so far as the effect of it is to withhold from a third party (the under-tenants of the lessee) a status which it is the policy of the Bill to confer upon them for the public good in the widest sense.

9. *For these reasons I would go to the length not only of making a legal presumption as in section* 5 (5), *but of declaring that every holding which as created, or as actually held was or is of such an extent as to exclude the "primary idea" of cultivation otherwise than on sub-contracts shall be deemed to be a "tenure" for the purposes of registration.*

10. The same difficulty as to specifying the exact area will arise as in the case of the presumption of section 5 (5) as it now stands. The line defining the absolute maximum of a raiyat's holding must be arbitrary. I would not place it higher than 100 standard bighas.

11. The line once fixed, it is evident that the difficulty of bringing about registration of the tenure (converted from a holding by this provision of the law itself) will be much diminished. Whether the person wishing to take the initiative be the holder himself, his landlord, the sub-tenants of the holder, or the Collector, the only point to be established for registration will be that the holding as created, exceeded, or as now held exceeds 100 bighas in extent.

12. Having thus declared that every tenant holding above 100 bighas shall be liable to be registered as a tenure-holder (notwithstanding contracts expressed or implied between him and his landlord, and notwithstanding custom, which should here be expressly excluded), I would allow the landlord or the tenant (according to their own views of their respective interests) to prove* at the time of registration the following fact to be authoritatively recorded in the register as an incident of the particular tenure:—that the tenant so to be registered as a tenure-holder had previously held the land subject to the provisions of the law in respect of the enhancement of the rent of occupancy raiyats, and should therefore continue to hold subject to the same provisions.

* The fact will require proof because the holding of above 100 acres may have been created and held on the condition of a "tenure" all along.

Where the above position had been established and the benefit of the status of raiyat against the landlord in that respect, maintained on the ground that such had been the previous position (as between landlord and tenant), there would be no reason for emancipating the converted tenure-holder from the general provisions of the Bill, giving the landlord the right of pre-emption in the case of sale of raiyats' holdings. I would therefore attach the legal presumption of the landlord's right of pre-emption to every tenure in respect of which the previous position of raiyat, as to enhancement, had thus been established and maintained. But I would allow the tenant to rebut this presumption by proving that the right of free sale was either attached to his tenancy by express contract, or that it had been exercised without the consent of the landlord previously obtained, and subsequently recognized by the landlord.

13. It would come to this; notwithstanding the conversion of the spurious raiyat, holder of above 100 bighas, into a technical tenure-holder by registration, he and his landlord would retain their relative status in relation to each other, in whatever respects this would be possible without affecting the interests of third parties (the sub-tenants, actual and prospective, of the spurious raiyat), but the previous status of either of these parties would not be maintained where it would affect the interests of third parties. Thus the late under-raiyats or korfas would acquire the status of raiyats against their landlord the converted tenure-holder. It would not be possible to maintain the right of the landlord of the converted tenure-holder to distrain for rent, but the loss of this right would be a small price to pay for the right of bringing the tenure to sale summarily for arrears of rent, which it is proposed to give.

14. The case of the raiyat, with a holding of an area below the arbitrary maximum, who sublets, still remains for consideration. In such cases the difficulty and expense of proof that more than half has been sub-let is reduced to manageable proportions. As regards the protection of the under-raiyats I am inclined to think that the sub-tenant who takes a holding from a small raiyat may be considered to have voluntarily accepted the position of an under-raiyat or korfa, according to its "primary idea," but the provisions of section 37 may perhaps still be considered desirable in respect of holdings below the arbitrary maximum as a deterrent to the possible non-agricultural purchaser. The right might be given to the landlord of having the holding of a raiyat, however small its area, registered as

a converted tenure, if the raiyat has sub-let more than* half of it, such registration making it liable to sale for arrears by the proposed summary procedure. This would—

(1) Operate as an assistance to the landlord in realization of rents.
(2) A discouragement on sub-letting.
(3) A discouragement to intending non-agricultural purchasers.

To such purchasers, or indeed to any other possible purchaser, who may contemplate acquiring an occupancy raiyat's holding against the avowed wish of the landlord, the possible conversion of the holding into a tenure liable to be brought to sale for arrears of rent on application of the landlord without antecedent decree will, no doubt, be a very strong deterring influence, for reasons which are unfortunately too obvious.*

* It will be understood that I am discussing the question on the assumption that the principle has been accepted that *all* tenures may be registered; and when once registered under the procedure of the proposed law shall be liable to summary sale without antecedent decree; whether such legislation is safe under the circumstances of the country, and if not, what distinction should be drawn is another question, as difficult as it is serious.

15. Thus the tenures liable to registration would fall under three classes:

I. Tenures as hitherto recognised, apart from the special provisions of this Bill, which would be subject to all the general provisions of the Bill in respect of tenures;

II. Holdings acquiring the character of tenures under the special provisions of the Bill, as comprising more than 100 standard bighas.

III. Holdings of less than 100 bighas in extent acquiring the character of tenures from the fact of more than half of the area being under-let. The relations of holders of tenures of the second and third classes towards their tenants would be precisely the same as those of tenure-holders of the first class; but their relations towards their landlord would depend on the special incidents which might be proved in each case.

Enhancement of Rent.

Section XLI.—After considering all that has been written in the dissents of the Members of the Legislative Council, in the Government Circular, and elsewhere on this mooted section, I approve of it.

The deliberation which is entailed by the necessity of registering the voluntary contract before an official who has to satisfy himself as in 41 (2) will be a valuable check upon an evil which experience has shown to call for a check—the hasty acceptance by the weaker party† of unreasonably improvident terms of contract either under pressure, or under passing temptation.

† I speak of each raiyat when dealing *individually* with his landlord as the weaker party.

The permission to enhance up to the full extent which would be obtained in Court (to be final for 15 years) is good and necessary as a means of avoiding litigation, whereas the option of making a smaller enhancement which shall be final for half that period only is good as removing the temptation which the landlord would otherwise be under of enhancing up to the full maximum of 4 annas in the rupee. Where the arrangements are made amicably, thus eliminating the objectionable element of expensive and vexatious litigious proceedings, gradual enhancements at the rate of 2 annas in the rupee after seven years are better than large enhancements of 4 annas in the rupee after 15 years.

I would however give as much elasticity to the provision as its character allows by a change of wording in (*c*). The period between seven years and fifteen years consists of eight years. The difference between the rate of enhancement which the section requires to hold good for seven years and that which it requires to hold good for fifteen years is 2 annas in the rupee, which is equivalent to one quarter of an anna in each of the eight years after the expiration of the first seven. In (*c*) for the words "of at least fifteen years" I would substitute the words "which shall exceed seven years by at least one year for every quarter of an anna by which the enhancement exceeds two annas in the rupee;" thus if the enhanced rent exceeds the previous rent by three annas in the rupee; as the enhancement exceeds two annas in the rupee by four quarters of an anna, the contract must fix the rent for at least eleven years, being four years in addition to seven years.

The maximum of four annas in 41 (1) (*a*) would make any specification of fifteen years unnecessary.

But matters are so much simplified and rendered so much more intelligible to the people by adapting the provisions of the law to ideas current in their own transactions that I think it would be well to take sixteen years throughout the bill as the minimum term for which an enhancement at the rate of four annas in the rupee (whether made by private contract or by course of law) shall be final.

One quarter of an anna, a native pice, would thus correspond with one year. If this were adopted, an amicable enhancement at the rate of two annas in the rupee would of course be made final for a term of eight years at least instead of seven as now drafted.

(2).—The alteration made from the first Bill in the points which the registering officer is required to ascertain is, I think, excellent. Even if the provisions of the first bill in this respect had not gone beyond the requirements of the case, it was a fatal objection to them that they would have been unworkable.

Section XLII.—I will here examine the direct working of this section apart from its anticipated indirect effect in raising the general rate.

1. The first objection which occurs is perhaps to the drafting. Land has been previously held by a tenant at a peppercorn rent; for some reason it reverts to the disposal of the landlord. It cannot be intended that he should be debarred from reletting to a settled raiyat of the

village or estate except on the conditions of the section. Such a provision would exclude the settled raiyat from all chance of getting the land.

2. The next objection is that the section is not workable for the purpose intended except on the hypothesis either—

that the integrity and identity of a holding once held by a tenant will be maintained through all vicissitudes of acquisition by the landlord and re-letting by him to a fresh tenant, or

that every bigha of land which has once been let to a tenant will be easily referrible to a class to which a specified rate of rent is attached.

It is evidently not a matter of course that either of these hypotheses should be realised. It will often happen that in a given village or estate (I use the alternative phraseology of the bill) the holdings of A., B., and C. raiyats, each of whom has held his holding at a "lump rent" without specification of qualities of land, fall into the hands of the landlord. In the following year perhaps four more such holdings fall into his hands, so that he has at his disposal for re-letting the lands which previously constituted seven holdings. Presumably the lands of each holding were not in a ring fence but scattered about in plots throughout the village.

It can scarcely be intended to prevent a landlord from redistributing the lands which are thus at his disposal, as he may choose, for the purpose of re-letting, but it is obvious that if he chooses to constitute a fresh holding consisting of portions only of two or more of the previous holdings and to re-let such newly constituted holding to a settled raiyat, the restrictions of section 42 cannot be worked. It would be impossible to ascertain what was the rent paid for the land by the previous tenants, who had held different parts of the land as portions only of their several "lump-rent" holdings.

3. I do not see how the section can survive this objection; but a third obvious objection on the surface is that it offers a direct pecuniary inducement to the landlord to relet to any tenant rather than to a settled raiyat of the "village or estate," thereby reducing the stock of land available for the expansion of the settled raiyats.

4. A fourth obvious objection is that the word "previously" goes back to all time, so that even if thirty years had elapsed since land was held by a tenant, yet the landlord could not relet to a settled raiyat at a rate more than 4 annas in the rupee higher than the rate paid by the previous tenant, even though during that period the legitimate rents of occupancy raiyats of the estate had risen to the extent of eight annas in the rupee. It may be replied that after twelve years' occupation by the landlord the land would become his khamar under a previous section, but section 42 does not recognize that the fact of the land having become khamar excludes it from the operation of the section.

5. If any further examination of the probable working of the section is required, a distinction must be drawn between neighbourhoods in which the competition is by landlords for raiyats and those in which the competition is by raiyats for land.

6. As long as the competition is for raiyats, there is no practical danger of the rent of land which becomes available to the landlord for letting to a new tenant being forced up beyond the occupancy raiyat's fair rate. If the landlord desires to get a tenant who will not at once step into the land with rights of occupancy, he will have to attract the outsider by offering it to him at a lower rate than that at which he (the outsider) could obtain land (with immediate occupancy rights attached) in any village in which he is a settled raiyat. In neighbourhoods of this class therefore the section is not called for, and would be inoperative.

7. In neighbourhoods in which the competition is by raiyats for land the effect will be this: for the available land, two classes of candidates will present themselves to the landlord, those who on being let into the land will be non-occupancy raiyats, and those who being settled raiyats would acquire it at once with occupancy rights. The land was held by the previous tenant at eight annas a bigha; the landlord may not therefore let it to the settled raiyat at a higher rent than ten annas a bigha. The non-occupancy candidate however offers fourteen annas. Even if the landlord did not consider the non-occupancy candidate, as such, to be the more desirable tenant (which in their present frame of mind most landlords would do), he would certainly let to the non-occupancy candidate for the sake of the higher rent. But even on the supposition that the landlord holds the less popular view that it is an object to let such land to his settled tenants, it is evident that he will as a mere commercial transaction demand from the settled candidate, in the shape of a bonus, the capitalized difference between the ten annas with the protection of a settled raiyat, and the fourteen annas with the incidents of a non-occupancy raiyat. Commercially speaking, the settled raiyat will have gained nothing by the protective restriction of the clause; from a different point of view it may perhaps be said that the great object has been promoted in this case (as in all others in which the landlord anticipates his and his successor's share of the profits of the land by creating favoured holdings on payment of bonus) of strengthening the position of the individual tenant for all time.

8. *The course of the discussions has brought me to the conclusion that any attempt to control by legislation the initial rate of rent at which a landlord shall let a raiyat into the occupation of lands which are absolutely at the landlord's disposal must be futile, and will probably be mischievous. Control can only be exercised over future enhancements.*

Section XLIII (*a*).—Assuming for the moment that the idea of the prevailing rate as a ground of enhancement will eventually be retained, I would make the section more precise in its meaning than it is.

1. In a large plain in which the land is of uniform quality, a small estate A., of say five hundred bighas, is held by thirty occupancy raiyats who pay eight annas a bigha.

The similar lands abutting on the estate (which may either belong all to one large estate or to a number of smaller estates), and constituting "the vicinity," are held by similar occupancy raiyats, who as a generally established rate pay twelve annas a bigha. Is it the meaning of the section as it stands that on these facts, apart from all complications of special pleas, the landlord of A. may enhance the rents of his thirty occupancy raiyats up to 12 annas, the prevailing rate in the vicinity? The answer, I suppose, will be in the affirmative. But in practice so simple a case is rarely found.

2. It being assumed that the rates which the raiyats in the estate A are paying is considerably lower than that paid for similar lands "in the vicinity," and that therefore this is, broadly speaking, a reasonable ground of enhancement as against the raiyats of A, the facts generally are that "the vicinity" of A consists of lands* belonging to several estates, B, C and D. The landlord of B being (being according to the views which the speaker may hold) a harsh landlord, or a prudent and energetic developer of the resources of his property, and having docile tenants, has by gradual enhancements (which perhaps have been amicably accepted), kept up his rents in full proportion to the rise in the letting value of the land, so that the rate of one rupee a bigha is now admitted to be payable by his occupancy raiyats without objection.

* *Vide* printed volume of selections from the correspondence on the preparation of tables of rent rates of selected tracts.

The zemindars of estates C and D have not kept up the rates of rent in full proportion to the gradual rise in letting value, but by compromises with their raiyats have succeeded in establishing recognized rates of, say, nine annas and ten annas only in their respective estates; but in the estate A, as has been assumed, the rate payable is eight annas only. This may be owing to different causes, such as the landlord's laches in looking after his own interests or the laudable motive of his personal inclinations of consideration for his tenantry, or his unwillingness to force legitimate enhancements on a strong and uncompromising tenantry by the unscrupulous indirect means which are so often resorted to for this purpose.

3. In this very common state of facts what is to be considered the prevailing rate in the vicinity up to which the landlord of A may enhance the rent of his thirty raiyats? It is evident that there are three recognized and established prevailing rates. How this question is dealt with by the Judges in contested suits I do not know; but in settlement proceedings in which revenue officers have authoritatively to record the rent which is demandable from the raiyats of A they would probably strike an average of the three prevailing rates—twelve annas, eleven annas, and nine annas—and so educe ten annas and eight pie as the standard of prevailing rates up to which they would record the rents in estate A as liable to be enhanced. How far this would be a full satisfaction of the rights which the law intends to confer on a landlord who presses for his full rights by litigation is doubtful; at any rate the mode of adjustment is not in strict accordance with the wording of section 43 (*a*) as it stands. It would be in accordance with this wording, "That, in the absence of special reasons, the rent paid by the raiyat is unduly low with reference to the rates of rent which prevail in the vicinity, as rates payable by occupancy raiyats for land of a similar description and similar advantages."

4. I suggest for consideration the adoption of some such wording as this; I may also mention for consideration another slight change of wording, which would however have a very material effect in changing and restricting the effect of the section,—the introduction of the words "of the estate" after the words occupancy-raiyats. The section would then be directed only against such occupancy raiyats as had without sufficient special reason (often by mere uncompromising opposition) succeeded in resisting a rate which has been fairly established in the estate either by amicable arrangements or by the painful process of litigation. But then I would guard the section against being understood to assume that one recognised prevailing rate must necessarily be found existing on an estate, and this I would do by the addition of such words as "provided that one recognised rate is established on the estate as the prevailing rate for such land."

The section so modified would be applicable to estates of the Jessore type as brought out by Mr. Finucane's enquiries,† but it would not be applicable to estates of the type of those in Tirhoot, Shahabad and in Moorshedabad, in which it may be said that there are almost as many rates of rent as there are raiyats, as elicited by the enquiries of Messrs. Finucane and Tobin and Baboo Parbutty Churn Roy.‡

† For simplicity of exposition, I assume uniformity of land and its advantages as well as the class of raiyats throughout.

‡ *Vide* pages 89 to 198 of the same printed volume.

Section XLIII (*b*).—This clause to be used as explained by the Government of India seems to me as good as can be devised. Nothing which has since passed leads me to doubt the soundness of the conclusion arrived at by us on the Rent Law Commission that the rise of prices should be calculated on staple products. This is subject to any further information which may be brought out by the local enquiries which have now been ordered by Government.

Section XLIV (*a*).—With reference to my remarks on 43 (*a*), I would reduce the maximum of enhancement to four annas in the rupee, if the present frame of section 43 (*a*) is adhered to, *i.e.*, if the existence of higher prevailing rates in other neighbouring estates is to be the ground of enhancement for the raiyats of the estate in question; but if the section were altered so as only to take the prevailing rates on the estate itself as a ground of enhancement against individual raiyats holding at exceptionally low terms on the same estate, I would retain eight annas in the rupee as the maximum of enhancement.

(*b*).—The wording may require alteration in accordance with any which may be adopted for 41 (*a*).

(*d*).—Should any provision in the sense of section 42 be eventually adopted, the only device I can see for preventing its tending to force up the general rates of occupancy raiyats' rents, as is apprehended, would be to provide that the rent of lands which have at any previous time been re-let to a settled raiyat, after having been held by a non-occupancy raiyat, shall not be taken into account in ascertaining the prevailing rate in any vicinity. The detail is objectionable enough, but I do not know that it is more objectionable than the "land which has been previously held by a tenant" of section 42 (1) as it stands. The word "previously" goes back to all time.

Section XLV (*a*).—Quinquennial periods will not be found long enough for the comparison. In order to obtain fair results, one or two years out of a quinquennial period will generally have to be put aside as years in which the ruling prices were affected by definite disturbing causes.

For this reason, instead of using the expression "average prices during" the period of comparison, I would use some such expression as "the average of the prices which prevailed in years which were not affected by known abnormal causes."*

* The Rent Law Commission discussed this point very fully.

Section L (1).—I think that fifteen years as an absolute minimum is likely to lead the landlords to press for the fullest measure of enhancement which it is possible to enforce, and so to encourage large *per saltum* enhancements which would distress the tenants more than mere gradual increases of rent would do.

It would be better on the whole, as in the case of private contracts, to take eight years as an absolute minimum of time; and for this period an enhancement up to two annas in the rupee should be the maximum.

Then, as I have said under section 41, I would allow the enhancement to be at any rate above two annas in the rupee (up to a maximum of four annas), provided that the rent so determined should not be liable to further enhancement for a term which should exceed eight years by one year for every quarter of an anna by which the enhancement exceeds the rate of two annas in the rupee.

If no suit for enhancement can be instituted after once such a suit has been instituted and dismissed on its merits, it should be made very clear in the procedure sections that a suit is not to be dismissed on the mere ground that the plaintiff has claimed enhancement greater than that to which he is entitled. When the claim made is found to be thus excessive, the Court should be bound to decree the enhancement which is found to be proper, adjusting the costs of suit accordingly.† If a claim for enhancement may be thrown out on the sole ground that it puts the enhancement too high, it is evident that the landlord cannot properly be precluded from suing again after a short time.

† An exception might be made if the claim is put so high as to show *mala fides*.

To provide as the section does that if a contract has been legally made under section 41 (1) (*b*) for seven years only, no suit for further enhancement may be instituted till fifteen years have elapsed after the date of contract does not seem defensible.

Reduction of Rent.

Section LI (*a*).—The clause does not seem to me open to the apprehensions expressed in paragraph 13 of the Government Circular that the deterioration of land entitling the tenant to a reduction of rent is limited to some incident admitting of precise definition as to time of occurrence and mode of operation. At any rate, if it is intended to make the ground for claiming a reduction of rent for deterioration of land wider than the corresponding ground of "fluvial action," on which only an enhancement of rent can be claimed, the object may be attained by substituting for the words "other like calamity" such words as "other cause, sudden or gradual."

Section LI (*b*).—This clause does not fit into 50 (1).

Reading the two clauses together the landlord may obtain a decree for enhancement in 1880, say on the ground of rise of prices; certainly in 1885 (after the lapse of a quinquennial period), if not earlier, the tenant may on the ground of a fall in average prices obtain a reduction of the rent determined in the suit of 1880; nevertheless the landlord may not institute another suit for enhancement till 1895. The periods applicable under the sections respectively should be made to fit into one another.

Price Lists.

Section LII.—The questions mooted in paragraphs 14 and 15 of the Government Circular depend so much on the replies which may come from local officers, that I need not notice them further here.

Commutation.

Section LIII.—Notwithstanding the argument founded on the desirability of encouraging habits of thrift in the raiyats by inducing them to lay by the surplus profits of a good year, in order to meet the demands of a future bad season, I believe that the system

of payment of rents in kind or in the shape of the estimated money value of a certain proportion of the produce is the best suited to the circumstances of the poorer class of raiyats who live from hand to mouth, especially where the land is poor and cultivation precarious; and that in itself it is so popular with the raiyats, who so pay their rents, that the raiyats of an estate on which it is worked with reasonable fairness will not voluntarily apply for a change to contract money-rents.* If so, the right of application for commutation becomes nothing more than a protection provided to the tenant against oppressive action on the part of those who are entrusted with the collection of these rents; and in this view, if commutation is not desired by the landlord, it lies with himself to avoid driving his raiyats to apply for it.

* Among other things the *bhaoli* system affords a material guarantee to the raiyat that his landlord will keep in an efficient state petty ridges and other means of protection to the crop which he is bound by custom to maintain. While I am writing this, a petition is before me, praying that a certain landlord may be ordered to revert to the system of rents in kind, for this reason.

The zemindars of Behar, as represented by the Maharajah of Darbhanga, object to commutation. There is therefore little danger of the zemindars forcing commutations on ryots, on the sole ground that money rents are more simply collected. It will be open to either landlord or tenant, under clause 6, to oppose a commutation applied for by the other.

Commutations to money rents will, I suppose, be initiated principally by energetic and reforming Collectors. One such officer has, in his haste to confer the blessings of reform on the raiyats, made commutations in certain estates under his management, in anticipation of the completion of these discussions; although he is a Collector of much experience and his proclivities are notoriously those of a "raiyat's Collector," he now finds that the money rents imposed are much too high; and we have had to revert to the old system, until the details of the proposed reform are better understood.

(2).—I agree generally in Mr. Reynolds' suggestions regarding this section, recorded in his dissent to the Bill. But in applying the rental in the Road Cess returns as a maximum it would be fair to make allowance for any rise in prices of produce since the Road Cess return was made, if more than, say, five years before the date of commutation.

Returns for purposes of cess valuation may under the Cess law be called for after the expiration of five years from each valuation, but re-valuations will not be habitually made after so short a period; so that the last valuation returns may honestly have shewn, as the money value of the rent, in kind a sum considerably below that which it will represent at the time of a future commutation.

CHAPTER VI.

NON-OCCUPANCY RAIYATS.

1. The effect of this chapter on the duration of the non-occupancy raiyat's occupation may be considered in its bearing on two classes of landlords,—

(i) Those who, whether from principle or nonchalance, take no active measures to defeat the object of the Legislature, the gradual acquisition of occupancy rights by non-occupancy raiyats;

(ii) Those who exert themselves actively to prevent the acquisition of such rights.

2. As regards the estates of the former class it will make little change. Things will go on much as they now do, though the effect of clauses 6 and 9 of section 60 will probably be to promote amicable arrangements for enhancement at fair and reasonable rates, and to check demands for excessive enhancement.

3. As regards the estates of the second class of landlords, the effect on occupation will be:—

(*a*) As regards future incoming tenants, a system of short leases will be introduced and the term of those leases will be short enough to guard against the growth of occupancy right from miscarriage of the lessor's endeavours to eject under section 58 (*c*) on the expiration of the lease. If by oversight the notice to quit should not be served six months before the expiration of the lease, or the suit for ejectment should not be instituted within six months after its expiration, or if, which unfortunately must be taken into account, the raiyat should succeed in tampering with or discrediting the evidence by which the service of the notice to quit is supported, or if the suit for ejectment should fail from any of the innumerable and unforeseen causes from which legitimate suits do fail (especially suits of a class on which the Courts do not look with favour), the raiyat will be left in the legal position of one who holds otherwise than on a lease; he will be entitled to hold on at a judicial rent for five years longer under clause 7 of section 60. To guard against such contingencies I suppose that the short leases will habitually be for a period which with the five years of clause 7 added to it will leave a considerable margin before the completion of the twelve years period.

If a raiyat allows himself to be amicably, but formally, ejected as on expiration of lease, he will probably be restored to occupation of the lands on a fresh short lease after he has been actually or nominally out of possession for a year or two.

(*b*) As regards non-occupancy raiyats who are on the estate when the Act takes effect, the effect of clauses 6 and 9 of section 60 will probably be to mitigate demands for "amicable" enhancements.

(c) In the case of every raiyat who may have held for seven years or more before the Act takes effect, the landlord will have lost the legal right of preventing the acquisition of occupancy rights. The raiyat can continue to sit at the judicial rent of clause 6, section 60, for the five years which are required to make up his twelve years of occupation.

(d) As to raiyats who have held less than seven years when the Act takes effect, the course open to the landlord will be at once to demand an enhancement of rent, to which unless the raiyat agrees, the result will be the determination of a judicial rent under clause 6 of section 60, after five years of which the raiyat will be at the landlord's mercy, as much as one the term of whose lease has expired.

4. The landlord will make every effort to induce his non-occupancy raiyat to "relinquish and re-enter under a lease." This is anticipated in paragraph 16 of the Government circular, but under section 6 it would probably be necessary that the relinquishment should be accompanied by interruption of actual occupation before the raiyat would be deemed to have been admitted to occupation under the lease for the purposes of the chapter.

5. The effects of the chapter as it stands may then be summarised thus—

It will tend to keep within reasonable bounds the demands of all landlords for enhanced rent from non-occupancy raiyats. This is a good effect.

It will virtually confer a right of occupancy after the lapse of five years on every raiyat who may have held his lands for not less than seven years when the Act takes effect. This is an effect so important that if it is intended by the legislature it should be plainly expressed a substantive provision of the Act.

It will stir up to organized measures towards defeating the accrual of occupancy rights those landlords who are inclined actively to oppose the acquisition of such rights. This is a bad effect.

6. The Legislature must decide whether the scheme of this chapter should be adhered to with these attendant effects in view.

7. To pass to the question of differential rates of rent for occupancy and non-occupancy raiyats respectively as again mooted in page 16 of the Government circular.

Presumably under section 56 the rent of an incoming non-occupancy raiyat will be fixed at a higher figure than perhaps any occupancy raiyat could be made to pay for it under the operation of the enhancement sections, if he happened to hold the land with occupancy rights; but looking at clauses 6 and 9 of section 60, I do not see how it can be said, as a broad proposition, that the section admits of a non-occupancy raiyat's rent being enhanced to a higher maximum than that of an occupancy raiyat. Rather, comparing the wording of clause 9 of section 60 with that of clause (a), section 43, I should say that the "fair and equitable rent to be paid by a non-occupancy raiyat for the holding," as determined under clauses 6 and 9 of section 60 contains the same general idea, as the amount to which the rent of an occupancy-raiyat, who was originally admitted to his holding on ordinary rent terms, can be enhanced under the rule as to the prevailing rate [section 43 (a)], or the rule as to the rise of prices [section 43 (b)].

8. The fact is that these special limitations to individual enhancements have so completely changed the general position as regards the rents payable by occupancy raiyats that it is difficult to say that any general standard is recognized by the bill for such rents.

9. As to the express legalization of the competition rate of rent by section 56 when available land is first let to a non-occupancy raiyat, I believe that no provision of law which a British Legislature would think of passing would have the effect of substantially preventing the landlord from taking any consideration which the candidate for the land is willing to give while he is a mere suppliant for admission to the land. If the Legislature were to refuse to enforce payment, the law would be evaded by such expedients as payment in anticipation.

10. I have already said the only expedients which occur to me for neutralising the indirect injurious effect of these initial competition rents upon the body of occupancy raiyats are—

(i) To exclude rents of occupancy holdings which have been affected by this cause from consideration when ascertaining the general prevailing rates payable in the vicinity by occupancy raiyats, if such prevailing rates are eventually retained as a standard of enhancement.

(ii) To reduce the area of land which will fall to the absolute disposal of the landlord for the admission of non-occupancy raiyats at competition rents, by providing that the settled raiyat, in preference to the landlord, shall have the right of pre-empting, at a judicially fixed price, any transferable holding which an occupancy raiyat may propose to transfer by voluntary sale to any purchaser other than a settled raiyat of the village or near neighbourhood.

CHAPTER VII.

UNDER-RAIYATS.

In a note dated 11th May 1880 which I laid before my colleagues on the Rent Commission* I wrote regarding the right of subletting by occupancy raiyats, "after considering all that has been urged in the present discussions and much more, I have arrived at the conclusion that as things now are, any attempt to restrict this right, either by absolutely prohibiting it or by putting any restriction on the

* Volume II of the Report of the Rent Law Commission, page 493.

rent for which the occupancy raiyat may sub-let, will be futile," and I gave my reasons for this opinion, to which I beg to refer. Nothing which has since passed has led me to change this opinion.

The sections as drafted would evidently work an effect which is not intended in the case of raiyats holding at low fixed rents or at specially favourable rates who may under-let.

CHAPTER VIII.

General Provisions as to Rent.

Rules for presumptions as to Money Rents.

Section LXIV (2).—I would change the period of presumption as proposed in paragraph 2 of my remarks on section 23 of chapter IV above.

(3).—This is a specious provision with a subtle effect. As the money value of produce rises in the course of years (temporary fluctuations apart), the payment of a fixed share or of the value of the fixed share of the produce is, in the long run, equivalent to a gradually increasing money rent; *i.e.*, the crops of 1880 and 1890 being of equal heaviness, half the crop in 1890 will represent more money value than half the crop in 1880.

The effect of the sub-section is therefore to declare that payment in a form which is essentially one of self-acting enhancement of money value in proportion to rise in prices shall be deemed to be payment at an unchanged money value. No wonder Mr. Gibbon protests on behalf of the landlords.

Section LXVI (*a*) *and* (*b*).—These two clauses are, I suppose, intended to correspond in meaning. If so, the wording should correspond.

I would word them thus—

(*a*) Lines 3 and 4 omit the words from "rent has been" to the end, and substitute "his rent was last fixed."

(*b*) For the present clause substitute—"be entitled to a reduction of rent for all land proved by measurement to have been lost to his holding, by the effect of diluvion, since his rent was last fixed."

Payment of Rent.

Section LXVII.—The provision of sub-section (2) is excellent; but a common effect of it will be to disturb existing local custom, under which rents are payable in monthly instalments.

In view of this change, it does not seem fair to hold tenure-holders absolutely to the dates and instalments of payment of their rent for which they have agreed with their landlords on the basis of the existing custom of monthly payment, nor absolutely to uphold custom in respect of the payment of their rents where the raiyats' custom has been changed under sub-section 2 so as to delay the receipts of the tenure-holders. I would in sub-section (1) reserve a right to Government to fix the dates and instalments of the tenure-holders' payments by rule, agreements and existing custom notwithstanding, whenever the Lieutenant-Governor may think fit to do so in consequence of any change made by rules issued under sub-section (2) in the custom of a district or tract in respect of payment of rents by raiyats.

Receipts and Accounts.

Section LXXI (2).—The printing of the form Schedule III requires looking to. If the form is to be generally understood, it had better be filled in with specimen entries. It has happened to me to find even Collectors' offices adding rupees and bighas into one total in such forms.

Deposit of Rents.

Section LXXV (1).—To require the officer receiving the deposit to affix the notification in his office forthwith (sub-section 1) is proper; but to require him to cause the personal notice to be served when fifteen days only have elapsed from the date of affixing the general notification (if sub-section 2 does require this) will go far to nullify the object for which I suggested the publication of a general notification in the office.

That object was to obviate the necessity of a large number of personal notices. Every landlord cannot be expected to have agents at the office of the revenue officers continually on the look-out for a notification that a raiyat of his has deposited his rent. The fifteen days of sub-section 2 will generally expire, and the necessity of issuing the personal notice will arise before any agent of the landlord has become aware of the deposit.

I would allow the Government to fix dates not less than four in the year on which a list of the pending office notifications under sub-section (1) should be hung up in the office. The personal notices of sub-section (2) should not be issued till fifteen days from such fixed date had elapsed. The Government would of course fix dates for sudder stations as far as possible to coincide with the concourse of revenue-payers on kist day. Knowing these fixed dates, the landlords, tenure-holders, as well as proprietors would make their arrangements for having the notifications of deposit looked after by their agents.

The personal notices are to be served free of cost. In order to create an inducement to the landlords to draw their deposits before the personal notices are served, I would provide, either in this Act or by order of the Governor-General in Council under the Stamp Act, that applications for payment presented within the fifteen days after the fixed dates should be accepted on unstamped paper. Applications not coming under the exemption would require the proper stamp.

(2).—The requirement to serve the notice on "every person who he has reason to believe claims or is entitled to the deposit" will not work. In some cases it will entail the service of a hundred personal notices in respect of a deposit, perhaps of one rupee, and that on persons who are really entitled to it, not to mention any number of probable claimants. I know a case in Faridpore in which the five hundred co-proprietors of an estate are divided into two factions, which are at feud. As both admit that there has been a private partition of lands, the disputes take the form of claims by each party to the same plot of land, and to the rent of it. If the rent of one such plot were deposited by the raiyat, it would be necessary for the revenue officer holding the deposit to issue five hundred personal notices.

Some form of representative service of notice should be prescribed.

Arrears of Rent.

Section LXXVIII (1).—In lines 4, 5 and 6 substitute "agricultural year" for "Bengali year," &c.

The landlord "may" institute a suit to eject the tenant "whether he is entitled by the terms of any contract to eject the tenant for arrears or not."

If by this is meant that notwithstanding the terms of any contract the landlord may *not* eject a tenant for arrears otherwise than under the procedure of this and the following clause, that meaning should be more decidedly expressed. As long as it is left optional with a landlord to eject absolutely and immediately on decree being passed in accordance with a contract, he is not likely to adopt a procedure which nullifies his contract right of ejecting if the defaulter pays in the arrears and costs within fifteen days after decree. [sub-section (2).]

Produce Rents.

Sections LXXXII and LXXXIII.—The local officers especially of Behar will be best able to criticise and advise on these sections.

Illegal Cesses.

Section LXXXVI.—I would put in words explaining that the word "exacted" as here used implies circumstances which create a reasonable belief of *mala fides* on behalf of the landlord exacting. As the clause stands it would probably be understood by some officers to justify award of the penalty in cases in which a landlord had realised more than he may be eventually found to have been entitled to as rent, although he had acted in good faith, and I am not sure that it will not raise questions as to the liability of the landlord for the individual acts of his authorized agent acting under general authority, such as a naib.

CHAPTER IX.

Miscellaneous provisions as to Landlord and Tenant.

Improvements.

Sections LXXXVIII and LXXXIX (1).—These sections are justifiable on the broadest grounds of general policy; it is an indisputable public benefit and not open to difference of opinion that lands should be improved, and this consideration properly overrides the individual right of arbitrary refusal. But sub-section 2, section 89, seems to me an interference with the existing rights and position of landlords as established by custom and recognised by law, which is not called for either by past experience, or by the prospects of the future, and is therefore unjustifiable. I would reverse the provision of sub-section (2), and give the preferential right of making the desired improvement to the landlord.

Section XCII (1).—I do not know what is the exact legal force of the words "in the presence of the parties." Technical construction apart, the wording would enable the tenant to prevent registration of the improvement by refusing to appear.

In order to give practical value to the section I would expressly give to all concerned the right of contesting the particulars and meeting the evidence of which it is proposed to make the record admissible in evidence in subsequent proceedings. If the opportunity thus given is not taken advantage of, the *ex parte* record must perforce be accepted, although *ex parte* oral evidence of the class which is likely to be ordinarily recorded under this section is unfortunately as nearly as possible useless in this province for the purpose of creating a conviction of truth.

2. One of the material points on which it would be desired to secure such recorded evidence would probably be the letting value or productive capacity of the land while unimproved. Is this covered by the words "evidence relating to any improvement"?

3. I would extend to the raiyat the right of registering the particulars of an improvement made by himself, with a view, in the case of a non-occupancy raiyat, of any future award of compensation on ejectment; and in the case of an occupancy raiyat, of any future determination of a judicial value of his holding for the purpose of pre-emption.

4. The local officers of the districts in which there is irrigation will report, as required by the Government circular, on the best means of reserving a right to a landlord to make irrigation channels through the lands of raiyats. I think that the right of taking land from a raiyat's holding for the purpose of making not only this but any other real improvement which will benefit other holdings should be conferred on the landlord. A procedure should be provided to this end. An antecedent authoritative declaration would be required that the proposed work will be such an improvement as entitles the landlord to the benefit of this procedure; the land should then be assigned and a moderate rate of compensation awarded by authority if the parties do not agree.

Surrender and Abandonment.

Section XCVI.—For the reasons given by Mr. Reynolds in his recorded dissent to the Bill, I would restrict this section to the case of the non-occupancy raiyat. Some change in the wording would be required, as it seems to assume that the raiyat has his residence on the estate or tenure of the landlord from whom he held the abandoned land, which would not necessarily be the case. Where a non-occupancy raiyat resides on the property of another landlord, it seems unnecessary to make the abandonment of his residence without notice an essential condition to the landlord of the holding entering upon it as abandoned.

In the case of the holding of an occupancy raiyat being brought to sale under circumstances which would authorise re-entry of the landlord on a non-transferable holding, a provision might be introduced that unless the late raiyat applies for the surplus sale proceeds, if any, within three months, the collector should pay them to the landlord on his application. Such delay on the part of the raiyat coupled with his previous failure to pay rent and cultivate might fairly be taken as evidence of intentional abandonment.

Measurements.

Section XCIX (1).—As suggested in the Government circular, a proprietor or tenure-holder should be allowed to measure the exterior boundaries of blocks of land which are held without payment of rent to him, but not the internal details of such blocks. Looking at the definitions of "landlord" and of "tenant" together, I do not suppose that the section as it stands would authorise anything more.

I would further restrict the landlord's right of measurement to the exterior boundaries of blocks comprised in tenures which are held at a fixed total amount of annual rent, such as patni tenures.

Section XCIX (2) (*c*).—All experience shows that, where the estate acquired is extensive, two years will be quite insufficient for such a detailed measurement and systematic rent-roll as every landlord ought to be encouraged to make on coming into possession of such a property. I see no object in imposing any limit of time. The substantive object of sub-section 2 of section 99 is to prevent raiyats being harassed by measurements after brief intervals. The longer the new purchaser of the estate puts off his measurements under clause (*c*), the longer rest will the raiyats have since the last previous measurement by his predecessor.

Section C (1).—To prescribe that the actual measurement shall be made according to the Government standard measure will be unpopular at first, and will tend to increase the difficulties which are already great enough in the way of getting the raiyats to give personal attention and consideration at the time of actual measurement. The provision will not remove the cause of dispute which is so frequent, viz., whether the bigha in which certain previous measurements are expressed, or in which the area of holdings is specified in certain documents, was measured with a pole of five cubits, or with one of four cubits in length.* This dispute will of course rise when it comes to converting the standard acres of the actual measurement into the local denomination. This difficulty is provided for by section 101(3).

The bigha being invariably the area contained in a square of which each side measures so many of the poles used in that particular measurement.

2. The objection to the use of the standard bigha in making the actual measurement will be felt more in the case of isolated measurements than in a general survey. Where the question of comparing the actual area ascertained by a new measurement with that of a former measurement is not come in dispute, the people will be quite content to use the standard bigha. They soon adapt themselves to a new standard when it is used on a large scale. When I first learnt that it had been decided to make the measurements of the large Khorda estate in acres, I thought it a great mistake; but when I visited Orissa, I was surprised to find the representative raiyats speaking of acres and decimals as glibly as they had been wont to speak of máns and biswas.

3. There is a certain advantage in promoting the popularization of a standard unit; and I would certainly have all systematic and extensive survey, such as the contemplated cadastral surveys of districts, made on a standard unit, but I would leave it to the executive Govern-

ment to prescribe the standard. Instead of section 101(1), I would give authority to the civil court or revenue officer concerned to order according to what unit the measurement should be made, requiring him to give the equivalent in standard bighas in his proceedings.

Managers.

Section CII et seq.—I adhere to the conclusion at which we arrived on the Rent Law Commission that it is desirable to confer on the District Judge the power of insisting on the appointment of a joint manager when necessary.

2. I do not recall any case in which it would have been desirable to make such an application to the Judge on the ground of inconvenience to the public, and, with reference to the reasons given by the Hon'ble Kristo Das Pal in his recorded dissent from the Bill, I doubt whether there is nowadays any necessity for retaining this ground of application; the permission to parties to apply for the protection of private rights would probably suffice; and I should hope that the mere fact of this provision being borne on the Statute Book will generally suffice to prevent the necessity of putting it into action.

3. If the ground of inconvenience to the public is retained, it seems to me that the Magistrate of the District rather than the Collector should be authorized to make the application to the Judge.

No circumstances occur to me under which the public inconvenience caused would affect the Collector's duties; if ever that officer were to make an application, it would probably be at the instance of the Magistrate of the District.

CHAPTER X.

Record of Rights and Settlement of Rent.

Record of Rights.

This is an excellent chapter.

With reference to the remarks of the Government of India in paragraph 19, I do not think the powers which the Government may confer on a settlement officer under section 223 are sufficient to compel the attendance of all persons whose presence in the field may be essential for the purpose of pointing out boundaries and giving assistance in the general operations, apart from cases in which dispute has actually arisen. Powers should be conferred on the settlement officer of requiring the attendance, whether before himself or any officer deputed by him to make local enquiries, of all persons whose assistance is likely to be useful. This may be done by a general notification addressed "to the occupants of the land which is about to be" operated upon, "and of the conterminous lands and to all persons employed on, or connected with the management of, or otherwise interested in, such lands," on the model of section 5 of the Bengal Survey Act V of 1875. Such general notification is not in itself a direct means of compelling attendance, but it would lead up to and should be supplemented by a power to be conferred on the Collector and also on the officer deputed by him of issuing a special notice requiring the attendance of any such person who does not attend on the general notice (as in section 24, Regulation VII of 1822, and sections 7 and 11 of the Survey Act).

Section 223 of the Bill enables the Government to confer on a revenue officer "any powers exercised by a Civil Court in the trial of suits," but the powers conferred on Commissioners of the Civil Court are too strictly limited to serve the purpose of amins and other subordinates deputed by settlement officers to make preliminary local enquiries.

Section CXIII.—(1) Line 7 after "therein" insert the words "or in respect of the omission of any entry therefrom." Similar additions should be made in section 114, line 5.

Section CXIV.—Regarding entries in the record under clause (*b*) of section 111 (the class to which the tenant belongs) and clause (*h*) the special conditions under which he holds, questions of legal difficulty and importance may arise. I would, as suggested by the Government of India, reserve to the revenue officer the power of referring such cases for trial by the ordinary Civil Court, following the model of section 55 of the Land Registration Act (Bengal Act VII of 1876).

Section CXV.—Under the existing organization, the Commissioners of Division or the District Judges would probably be appointed to exercise the functions of special Revenue Judges, as the Civil Judges used to be vested with the powers of Special Commissioners under the old resumption laws. The section will no doubt be so framed as to admit of the powers of special Judge being conferred on any Appellate Benches which may be constituted.

Section CXVI.—Looking at the facilities which exist and which are too often taken advantage of in this country to prevent parties interested from asserting their right in the manner and at the time prescribed by law, I should hesitate to give the force of finality to undisputed entries, as suggested in paragraph 23 of Government Circular. I would take a middle course between that and the presumption of section 116 (2) by allowing an application for revision of an undisputed entry within say six months after publication of the record under section 113 (2).

Settlement of Rents.

Sections CXVII et seq.—From the exposition of the scheme of these sections in paragraph 22 of the Government of India's letter, I understand it to be that, although the Local Government may under section 117 (1) make "an order directing that the rents of all tenants" in a given local area shall be settled by the Revenue officer, that officer will have no power to do anything more than to record the existing rent payable (as under section 111 (*e*)) unless either the landlord or the tenant applies to him to settle a fair and equitable rent in respect of any tenure or occupancy raiyat's holding.

This right of application does not extend to the holdings of non-occupancy raiyats.

Thus, apart from cases in which landlords or tenants apply for settlement of fair and equitable rents of tenures or occupancy holdings, the only difference between a record of settlement rents made in accordance with an order of Government passed under section 117 and a record of rights made in accordance with an order passed under section 110 (1) will be that in the former case the rents entered in the record as payable will not be liable to enhancement for 15 years, while in the latter case no such protection is given.

Vide his dissent to the Bill.

Without the benefit of the Government of India's gloss I should scarcely have understood the section so. I should have understood that an order of Government under section 117 would *per se* empower and require the Revenue officer to ascertain and record the rents which he considers fair and equitable for each tenure and holding; and I should have fallen into Mr. Gibbon's mistake that this provision was to be applied to non-occupancy as well as to occupancy raiyats; at any rate I should have so understood section 117 until I had reached sub-section 3 of section 118, which would have obliged to look for another construction of section 117 (1). The drafting might well be altered so as to leave no room for the misapprehension.

Section CXX.—There is much to be considered on both sides of the question, as pointed out by the Government of India. No doubt the provision that the rent as settled in such proceedings shall remain unaltered for fifteen years will largely promote claims to enhancement through the proceedings, and the consequent disputes which would not otherwise arise at that time.

On the whole, however, I think the scale is turned in favour of the section as it stands by the consideration that "a settlement of rents will not be undertaken unless the relations between landlord and tenant are unsatisfactory and litigation is impending."

CHAPTER XI.

Table of Rates.

Sections CXXIII et seq.—This chapter will be so valuable an assistance to those who *bonâ fide* wish to avoid litigation, in the exceptional tracts to the circumstances of which it is applicable, that I would retain it.

Section CXXX.—It is invidious for me to suggest that in this and similar instances functions are being imposed on the Government which according to the scheme of Government recognized by the statute-book appertain to the Board of Revenue. It is of the *raison d'etre* of the Board primarily to relieve the Government of such matters as these which fall within the ordinary routine of revenue business; the Lieutenant-Governor's right of interference in exceptional cases is of course reserved by the right of petition. When a table of rates for a village has been prepared by a revenue officer, considered by the Commissioner of the Division, and scrutinized and approved by the Board, I should think it might well be published as authoritative by them at any rate, if no further objection is preferred against it. A certain interval of time might be interposed between the passing of the Board's order of sanction and the publication as authoritative, so as to admit of objections being presented to the Government or, better still (as experience shows that no procedure can be invented which will prevent a certain number of objections being brought forward *after* publication, whether by order of the Government or of the Board, on the plausible allegation that the objectors were not aware of what was being done), it might be provided that the table as sanctioned by the Board should be published with a notice that it will be made authoritative after a certain time, if no objections are preferred as is provided, in the case of the proposed rules under the Act.

CHAPTER XII.

Record of Proprietors' Private Lands.

Sections CXXXV et seq.—I see no objection to these sections, read with section 30, as they now stand.

The exclusion of any particular land from record as khamar in an area in which a survey and record of khamar lands has been made under an order of the Government has, under the Bill as now drafted, a much less drastic effect (in the direction of restricting the landlord's freedom of action in dealing with such unrecorded land) than would have been caused by the provisions of the Select Committee's first Bill.

Section CXXXVIII (2).—In view of the custom of zemindars in some parts of making temporary assignments of portions of their khamar lands for special purposes, such as remuneration for services, the support of members or dependents of their families, I would add a proviso that the fact of a proprietor having assigned land temporarily for any such purpose will not affect his claim to have the land recorded as khamar if the land have that character at the time when so assigned.

CHAPTER XIII.

Distraint.

Sections CXXXIX et seq —I approve of these sections.

2. The Maharajah of Durbhangah objects that the procedure is less summary in that it entails application to the Court. The reply to this is that experience has amply shown that the landlords as a body (including in one case the official managers of a certain estate who followed the practice of the district until the irregularity was detected by superior authority) have abused the powers placed in their hands by the former procedure.

3. The Maharajah objects that the necessity for a previous application to the Court will leave to the raiyat ample time to cut and carry off the crop before the Court officers can reach the spot to distrain it. He seems to have overlooked clauses 3 and 4 of section 141, which effectually meet the objection. The application for distraint may be made, the preliminaries gone through, and the crop practically attached at any time before it is ready for reaping.

I think it should be required that such an application to the Court should be made at least a month before the crop will be fit to be reaped, so as to give the defaulter time to deposit under section 154, and so escape the forced sale of his crop. If the landlord has good reason to believe that the raiyat will not pay without distraint, I do not see what object he can have for delaying his application.

CHAPTER XIV.

Judicial Procedure.

I have no personal experience of judicial procedure, and will only refer to the views we expressed on the Rent Law Commission as to the difficulty of dispensing with safeguards in this country. The Select Committee has expressed similar apprehensions.

2. The question of suits against a number of tenants jointly is of much importance, but an opinion of any value can only be given by officers who have had personal experience of such suits. If they are allowed, some sections will be required prescribing details of procedure distinguishing between issues in which the defendants are jointly interested and issues which affect them separately. I believe the officers of the North-Western Provinces have some experience of such joint suits in some shape; if so, they should be consulted.

CHAPTER XV.

Sale for arrears under decree.

Sections CLXXXII and CLXXXIII.—I agree with Mr. Gibbon (*vide* his dissent) that to make a distinction between raiyats' holdings held at fixed rates and occupancy holdings will lead to complication, chicanery and litigation.

CHAPTER XVI.

Summary sale for arrears.

Sale of Patni tenures.

Section CXCV (2), line 3.—After "claimed" insert "as due from the tenures respectively."

Section CXCVII, line 7.—For "to" substitute "shall."

Line 10.—For the words "advertised balance" substitute the words "balance advertised as due from the tenures respectively."

Section CCI (1), line 3.—For "kachari" substitute "Collector's office," *vide* section 195 (2).

(3), line 6.—For "rubakari" substitute "proceeding."
(7) for this number substitute (5).

Section CCI, (1) lines 2 and 3.—For "kachari" substitute "in the Collector's office."

(2), line 1.—For "land" substitute "tenure."
(7) "such deficiency to be levied by the process for the execution of the decrees of the Civil Courts,"—this leaves a doubt as to whether this process shall be carried out by the Civil Court or by the Collector. It would be well to substitute "such deficiency shall be levied by the Collector under the provisions of the Public Demands Recovery Act (Bengal Act VII of 1876).

Section CCVII (1) (*a*).—Omit words from "for the purpose" in line 3 down to the word "effect" in line 7; and substitute for them the words "in consideration of the expenses entailed by."

Section CCVIII.—To meet cases which occasionally occur, I would also provide that a Collector who is for any sufficient reason (such as sickness or the large number of sales) unable to hold or to complete his patni sales on the day fixed may resume them the next day, and so on *de die in diem*.

There is an instance on record of a Collector of Burdwan and his establishment being kept at their office till one o'clock on the night after a patni sale day, owing to the necessity of holding all the sales on the advertised date.

Section CCVIII.—Read this with section 201, clause 6. As the two sections stand, if the eighth day happens to be a Sunday or holiday, notice of re-sale will not be given until the next day (say Monday), which will be the ninth day from the first sale. But this being Monday, section 208 does not authorise the postponement of the re-sale till the following day; in other words, the re-sale must be held on the very day on which the notice of re-sale is given under section 208. Therefore in section 201(6), lines 3 and 4, omit the words "that is, on the ninth from the first sale."

Nothing is too insignificant to be made the ground of challenging the regularity of sales which are made under these provisions of the existing law.

CHAPTER XVII.

Contract and Custom.

I am now writing as an officer of the Government advising on the best means of giving legislative effect to certain main principles of policy which I understand to have been finally accepted by the Secretary of State and the Governor-General in Council, as the basis of legislation.

Sections CCX et seq.—1.* The main policy which runs through the Bill is that it is for the public interest of the community that the position of the raiyats shall be strengthened by promoting their acquisition of occupancy rights.

It is obvious that the effect of the legislative measure in this direction will be nullified, unless some restriction is put on contract between landlord and tenant. Such restriction is an essential of the policy which the Bill embodies; but in view of the objections to which interference with contract, in the abstract, is open, I would reduce the restrictions to the minimum which is really essential. *I would not invalidate past contracts which have been legally entered into.*

2. As regards the future, I see no sufficient reason to prohibit contracts debarring either landlord or tenant from demanding commutation of a produce rent (section 210 (*e*)).

3. The other restrictions of the section I would adopt generally subject to the following modification.

Many cases may and do arise in which a landlord is willing to let for cultivation for a certain time land which is at his disposal but which he will certainly or probably require after a time for a definite object. If the land has not the character of khamar under the definition of section 30, the landlord cannot as the Bill stands by any means let a settled raiyat on to it without losing his power of re-entering when the land is required. He must therefore either cultivate it himself, or leave it uncultivated, or seek out a non-occupancy raiyat to whom he can let it on a short lease, with right of re-entry on expiration of the lease reserved under section 58(c). Here the landlord's object in keeping the land free of the right of occupancy is a legitimate one; there is no such questionable motive as that of taking excessive rent, or of using the transaction as a means of raising the general rent rates. The landlord would gladly make it over to one of his settled raiyats; and the settled raiyat would as gladly take the land for two or three years on condition of giving it up when the landlord requires it for his known special purpose; but it is evident that as the Bill stands ordinary prudence would prevent the landlord from making such an amicable arrangement. In such a case the provision of section 210 restricting the settled raiyat's right of contract puts him at a disadvantage as against an outsider.

4. I may illustrate by an imaginary example, which is, however, suggested by what occurred in connection with the land originally taken for the Dehree cantonment, but which was lately proposed for use as the site for the proposed agricultural institution.

The Government acquires a considerable tract as a mukarrari tenure within an estate, for a particular project involving gradual development and extension of buildings over several years. The extensions will not reach some parts of the land for a few years, and the obvious thing to do is to let the land for occupation by raiyats till it is required. But the Collector must seek out outside raiyats to hold the land on short leases; if it is let to a "settled raiyat of the village or estate" of which the Government's mukarrari tenure forms a part, nothing can avert his immediate acquisition of the occupancy right on the land, and therefore the Government will not be able to reenter, when the land is required for use.

5. It is evident that a private landlord may be placed in the same predicament. *I would therefore modify the absolute restrictions which section 210 puts on the right of contract by providing that, notwithstanding anything in this section, a raiyat may contract himself out of the general provisions of the Act in these respects by a written contract to be executed before, and with the permission of, a revenue officer, which permission shall not be given unless the revenue officer is satisfied that there is a good and sufficient reason for allowing such contract to be executed.*

The precaution suggested, it will be seen, is much the same as was provided in the first Bill issued by the Select Committee (but which has since been abandoned) in the case of voluntary contracts for enhancement of rent; the registering officer must be satisfied not only that the contract is understood and is voluntary, but also as to its merits.

Such a proviso would remove the disability with which the Bill as it now stands practically weights the settled raiyats as to admission to the temporary occupation of lands, under the circumstances which I have suggested.

Section CCXII.—This section, as well as section 217, will, I fear, increase the doubts and difficulties which are already experienced in dealing with hawalas, Noabad taluks, and other similar holdings, in respect of the relations in which the hawaladars, &c., and their tenants shall stand towards one another. Most of these holdings originated in contracts for the reclamation of waste land, and it will be impossible to say to what extent, under these sections, contract or custom will affect the operation of the law on the present position of the tenants. I regret that time does not allow me to go into the question, but no one is more conversant with the eastern tenures than Mr. Cotton, who will be available in Calcutta. I suggest that he be called into consultation on the details of these difficulties.

I may here add, with reference to the opinions expressed by him as Commissioner, and by Mr. E. E. Lewis, that I agree with them that the provisions of the Bill, which are protective to the raiyats, are not required for the districts of the Chittagong Division.

I pass now to the particular questions mentioned in the opening paragraphs of the Government of India's letter, and the remarks upon them in paragraphs 31 *et seq.* of the Government circular.

Of the seven points in paragraph 2 of the Government of India's letter all but (3) depend so much on the information which may be received from the districts that it is useless to discuss them without that information.

As to point (3), it will not be overlooked that it was found that, under the provisions of the Cess Act of 1871 (Bengal Act X, B.C.), lands which were held without payment of rent practically escaped assessment to the Road and Public Works cesses. The holder of the estate or tenure within which such lands lay omitted to return them; and naturally enough, for the results of returning such lands were, first, that the person making the return was liable in the first instance for the amount of cess assessed on the lands, which in the aggregate amounted to considerable sums in the only district in which such returns were made to any extent; and next, that he had very great difficulty in subsequently recovering the amount; even when he could identify and find the persons liable to pay, the amount of cess due by each was in numerous cases so very trifling as not to be worth the cost of recovering by compulsory process.

When the amendment of the Act was before the Bengal Council, a very elaborate system was devised and enacted as chapter IV, sections 50 *et seq* of Bengal Act IX of 1880, with the double object of promoting the return for the purpose of valuation and assessment of such lands, either by the holder of the estate or by the free-holder; and then of facilitating the recovery of the dues by the former from the latter. For the purpose of inducing the holder of the estate to bring the existence of such lands to the notice of the Collector in his returns for valuation, a large sacrifice is made; he is required to pay in to the Collector no more than one-half of the amount of cess which the free-holders are liable to pay to him (section 51). Again when an instalment of the cesses due to the holder of the estate is not paid within one month of the date on which such instalment is payable, such holder is entitled to recover a sum equal to double the amount of such instalment with interest on such sum calculated at the rate of twelve and a half per cent. per annum.

Then it was provided that in the case of the holder of the estate not making a return of a rent-free tenure within a year after the passing of the Act, the rent-free holder himself should himself become entitled and bound to make a return of his land to the Collector. On making such return the rent-free holder becomes emancipated from the liability to pay through the holder of the estate. This and other consequences of making such returns were expected

to act as inducements to the rent-free holder to disclose the existence of his lands to the Collector.

The effect of these provisions has been to lead to the discovery and return of numerous rent-free holdings. The system has been most worked out on the Hooghly district, where such holdings are counted by tens of thousands.

Under the provisions of Act VII of 1881 of the Indian Council "all sums due to the holder of any estate or tenure under the provisions of this chapter, in respect of any land held rent-free, may be recovered by such holder from any owner or holder of such rent-free land, or from any occupier of the same; by any means and any process by which the amount might be recovered if it were due on account of rent of a transferable tenure or holding, and subject to the same rules as to limitation (section 64A); " and,

"In every suit for the recovery of any such sum the person to whom the sum is due may proceed at his option either against the owner or holder of the rent-free land in respect of which such amount is due, or against the occupier thereof; and any decree obtained in such suit against any occupier of such land shall have the same effect and be followed by the same consequences in respect of the execution of such decree against the owner or holder of such land, and in respect of the sale of such land in such execution, as if the suit had been brought and the decree given against such owner or holder of such land, but shall have effect against such occupier personally so long only as he remains in occupation of such land, and no longer (section 64B);" For the reasons suggested in the Government circular I should hesitate to confer on the holder of the estate or tenure the power of bringing a rent-free holding, even when registered, to summary sale for the recovery of cesses said to be due. The temptation shadowed out in the Government circular would be strong, and the hostile feeling between zemindar and free-holders (as classes) is notorious. Rather than extend the powers of bringing rent-free tenures to sale without antecedent decree, I would be careful that the provisions of the Tenancy Bill and the contemplated Tenure Registration Bill are so worded that this result shall not unintentionally follow from them in combination with section 64A of the Government of India's Act VII of 1881.

Paragraph 4 of the Government of India's letter asks whether the existing revenue establishments are likely to be able to cope with the work which the Bill in its present form will create, or whether it will be necessary to strengthen them. It is plain that under no circumstances which can be reasonably anticipated will the existing overworked establishments suffice. It is quite impossible at present to form any conjecture of the increase which will be required. I should begin by giving a definite limited authority to Commissioners to entertain such establishments and to incur such expense on them, as may be indispensable for rendering public services which parties have a right to claim under the Bill, irrespective of the permission of the Government. But I would repeat the warning which I annexed to the report of the Rent Law Commission and which Sir Ashley Eden's Government endorsed that it is desirable to reserve to the Government the right of preventing its being swamped by business for the performance of which it will be impossible to provide qualified agency immediately on demand.

H. L. DAMPIER.

The 26th July 1884.

(Annexure A to Mr. Dampier's minute.)

RESOLUTION,

LAND REVENUE.

(Settlement and Surveys.)

HON'BLE H. L. DAMPIER, C.I.E.

Dated Calcutta, the 3rd May 1884.

READ a letter from the Commissioner of Chittagong, No. 1556C.C., dated 6th February 1884, submitting a further report on the appeal petition of Kalimuddin Darogah, regarding the settlement of certain Noabad lands in mouzah Mobarakghona in the Chittagong district.

THESE proceedings came before the Board on the appeal of Kalimuddin against the action of the settlement officer, supported by the Commissioner, in giving a farming lease of the available lands in mouzah Mobarakghona to the manager of a ward's estate; that lease was set aside; and as the proceedings appeared to call for closer examination, the Board set on foot a minute enquiry by their memorandum of the 5th July 1883, addressed to the Commissioner.

2. It appears that Kalimuddin was originally let by the circle farmer into possession of 800 bighas of land, of which one kani only was under cultivation. The date of this first pottah was 1212 Mughi style corresponding with 1850 A.D. The condition of it was that the land brought under cultivation should be measured up from time to time, and that Kalimuddin should pay Rs. 2 a shahi kani, or Rs. 8 a droon, on the cultivated land so found. A shahi kani is equivalent to four ordinary kanis, or rather more than an acre and a half. Two rupees a shahi kani is about 6½ annas a standard bigha, or say Rs. 1-3-7 an acre. The farmer measured up the cultivation from time to time, giving a fresh pottah to Kalimuddin each time, including more or less waste land; but always on the condition of paying at the said rate of Rs. 8 a droon for the land found cultivated. The last such pottah was given in 1235 M.S (1873 A.D.) for—

	Droons.
Cultivated land	12*
Waste land	13
	25 or 500 bighas.

In this last pottah of 1235 M.S., it is stipulated that the lessee shall make a new settlement after the expiration of the circle farm; but this was never done; so the settlement officer finds Kalimuddin holding under the lease of 1235 M.S.

3. At different times during his tenancy (beginning as early as 1221 M.S., 1859 A.D.) Kalimuddin has underlet land in numerous pottahs, each covering small areas. Out of 31 kabuliyats examined two only are for as much as four kanis each; four are for three kanis each; the rest for not more than two kanis.

Out of the same 31 kabuliyats—

	Rs.
1 is at the rate of	8 a kani.
1 ditto	6 ditto.
8 ditto	5 ditto.
The rest, Rs. 4 or less.	

These kabuliyats provide that the lessee shall pay his rent year by year and month by month at the stipulated rate; but most of them do not expressly mention any period for which they will remain in force; some, however, express that the lease is hereditary. The general condition is that the lessor may recover arrears by "any process which may be in force;" but in some kabuliyats it is expressly said that arrears may be recovered by sale of the holding. The lessees recognize the lessor as "talukdar;" they engage to pay any "new demands," and to cause their holdings to be recorded at any measurement as "tuppahs" within the lessor's taluk.*

* The circle farmer had of course no right to create a taluki tenure, to exist beyond the term of his own temporary lease.

4. The tenants who hold on the above leases from Kalimuddin have again in some cases underlet. The rate in the few kabuliyats before the Board is Rs. 4 a kani.

The conditions of their leases are much the same as those of the leases under which their lessors hold, the right of sale for arrears being even mentioned in some.

5. On this state of facts, or rather without looking into the facts of the superior holdings, the settlement officer recorded all the persons whom he found actually cultivating the

* 241 bighas.

and as the statutory ryots of Section 6, Bengal Act VIII of 1879, each for the plot of land which he was actually cultivating. He recorded as the rent demandable from them a rate considerably below what they were actually paying, taking his rates from those which were actually being paid by superior holders of the land, and settled that these rents should be paid directly to the Collector, altogether ignoring Kalimuddin, and his direct lessees, as being middlemen who should be set aside.

6. Subsequently Mohamed Wasil, one of Kalimuddin's direct lessees, petitioned that he should be recorded on the settlement papers as the dakhlikar in respect of the plots of which he held leases from Kalimuddin. By the term dakhlikar is understood the superior tenant who shall collect the rent from the cultivating ryots and pay rent to the Collector. His petition was granted by the settlement officer, but by some oversight the order was never carried out on the jummabundi papers.

7. Then Kalimuddin made a similar petition in respect of all the land which he held under the circle farmer's lease, of which it is found that—

				B.	C.	D.
He holds in his own cultivation	...	...	...	34	8	2
And has underlet as above	...	...	...	207	10	10
		Total	...	241	18	12

This petition was also granted, the settlement officer overlooking the similar and conflicting order which had been passed in favour of Mohamed Wasil.

8. The order in favour of Kalimuddin was carried out by writing his name with the title "dakhlikar" across the page of the jummabundi on which the land is shown, in respect of which the lowest cultivators are recorded as the statutory ryots liable under Section 6 of the Settlement Act VIII (B.C.) of 1879 to pay no more rent than that which is recorded against each.

9. As far as anything can be understood from these proceedings, the effect of them was intended to be that Kalimuddin should collect the rents directly from the recorded ryots at the rates specified (although they were actually found to be paying higher rents), and should himself be held liable to pay to the Collector a sum exactly equal to the aggregate of the maximum rents which he was legally entitled to demand from the ryots.

10. The Board pointed out that such an arrangement was essentially faulty and unsound, as no margin had been left to Kalimuddin out of the rents which he was authorized to collect to cover even risks of loss and costs of collection, much less to leave him a profit.

Moreover, it has been brought to light in other cases that this system of recording the lowest actual cultivator of the soil as the statutory ryot is a radical fault which pervades the recent settlement proceedings of the noabad lands; and that the result has been an unworkable settlement. Many of these cultivators arrange annually with their lessor; both the area which they will cultivate and the rate of rent they will pay for it being matters of annual arrangement. They come and go at will. Although in a promising season they pay high rents (much higher than those recorded in the settlement proceedings as the maximum which is demandable from them), the following year they may throw up half their land, and pay at a much lower rate for the rest; or they may throw up their land altogether. It is impossible to recognize such fluctuating holders as the statutory ryots of the Settlement Act whose rent is protected; and it is equally impossible to take the uncertain arrangements "which happen to exist between them and their lessors an the moment when the enquiry is made as the basis for a settlement of the Government demand.

11. The question then arises, who is to be recognized in the settlement proceedings as the statutory ryot of Section 6 ?" The Commissioner and Mr. Manson, the Collector, who reported on these proceedings are of opinion that Kalimuldin should be so recognized, and looking at all the circumstances of the case the Board agree that this course will be most in accordance with the spirit of the law. They therefore direct that Kalimuddin shall be recorded as the statutory ryots in respect of the holding of 241 bighas 18 cottahs which was found to be partly in his immediate cultivating possession and partly in his possession through the under-tenants to whom he had underlet.

12. The Collector and Commissioner have proposed that the names of the lowest cultivators whom the settlement officer originally recorded as the statutory ryots with protected rents shall be allowed to stand on the jummabundi record, the amounts of rent entered against each being struck out.

But it seems to the Board that this procedure would not be fair to the holders (perhaps a series of several holders) who intervene between Kalimuddin and the lowest cultivator who is so recorded, as it would at least imply that greater recognition is given by the settlement proceedings to the rights of these lowest holders than to those above them.

They therefore direct that all the existing entries in the settlement jummabundi relating to the 241 bighas 18 cottahs of land in question be cancelled, and marked across every page as having been set aside. For them will be substituted one entry in the name of Kalimuddin; all holders below him will thus be placed in the egal position of *kurfa* ryots unrecognized in the settlement proceedings.

13. It remains to determine what amount shall be recorded as the rent demandable from the ryot Kalimuddin under Section 6 of Act VIII (B.C.) of 1879, and as to this, further report will be called for from the Commissioner.

By order of the Board of Revenue, L.P.,

W. H. GRIMLEY,

Offg. Secretary.

A. E. des.—Reg. No. 4809J—250—2-8-84.

Dated Calcutta, the 18th August 1884.

From—H. J. S. COTTON, ESQ.,

To—The Secretary to the Government of Bengal, Revenue Dept.

IN reply to your demi-official letter of the 3rd instant, I have the honour to submit the following brief expression of my views regarding section 212 of the Bengal Tenancy Bill.

2. The section provides that nothing in the Act shall affect any contract for the reclamation of waste land.

3. There is no doubt that a provision of this nature does allow of the application of principles inconsistent with those enunciated in other parts of the Bill. Thus, for example, if the terms of a contract for the reclamation of land should recite that a right of occupancy shall at no time be acquired in the land, the contract would, I presume, be valid notwithstanding the provisions of section 210, which appear to enact the very contrary. If not, to what extent is it intended that section 212 shall be in force? It is to be observed also that, if the terms of the contract are not express, but implied, they must be regulated by custom which, under section 217, must not be inconsistent with the provisions of the Act. But if custom in regard to the reclamation of land is inconsistent with the provisions of section 210, will section 212 be allowed to prevail in enforcing the custom?

4. Such abstract difficulties suggest themselves in the interpretation of the section. But in operation they will, I think, be more than counterbalanced by the advantages the section affords. It is desirable, above all things, to avoid the figments of modern legislation, which so often create confusion in our dealings with howlas, Noabad holdings, and other similar tenures which are based on a right of reclamation. It is the flagrant defect of our existing laws that they drive all persons holding under a reclaiming title to enrol themselves either as tenure-holders or as ryots. The jungleboorce ryot of the old Regulations is effaced by the modern Statute Book which has hitherto been unable to recognize that the reclaimer's right is of a kind altogether different from, and superior to, a mere right of occupancy. The framers of the present Bill have apparently perceived this defect, and are anxious to escape from the crystallised and artificial groove of existing legislation. They have therefore afforded the reclaimer a loophole of escape from the general provisions of the law in force. This is one of the best features in the proposed law: and while I am not blind to the inconsistency which sections 212 and 217 involve, I welcome them on the very ground of their elasticity, and I trust that by their means more justice may now be accorded to persons holding land under a reclaiming title than is possible under existing enactments.

5. The character of a reclaimer's right has been discussed by me in my memoranda dated 31st January 1884 and 10th July 1884, and in other notes which have already been laid before Government.

C. E. G.—Reg. No. 6568C—327—9-9-84.

No. 47R, dated Bankipore, the 6th August 1884.

From—F. M. HALLIDAY, ESQ., Commissioner of the Patna Division,

To—The Secretary to the Government of Bengal, Revenue Department.

IN conformity with the instructions of Government conveyed in your letter circular No. 3T—R, dated 24th May last, in connection with the Tenancy Bill as revised by the Select Committee of the Legislative Council of the Governor-General, I have the honour to say that I hold a conference of the Collectors of the division at Bankipore on the 25th July, at which were present—

Mr. Price, Collector, Durbhunga.	Mr. Vowell, Collector, Patna.
„ Boxwell „ Gya.	„ Nolan „ Shahabad.
„ Norman „ Mozufferpore.	„ Forbes „ Sarun.

Mr. Henry, Collector, Chumparun.

The conference sat from the 25th July to the 2nd August, both days inclusive, and the fullest consideration was given to the measure under discussion. The Bill was taken up and considered chapter by chapter, continual reference being made to the instructions contained in your letter now under reply, as also to the points raised in the report of the Select Committee on the Bill, and in the letter of the Government of India (Legislative Department) to the Government of Bengal (Revenue Department), No. 784, dated Simla, 5th May 1884.

2. The following report gives the general opinion of the conference, and indicates where there has been marked dissent by individual officers and the differences of opinion on important points. I take it for granted that Government wishes now to have from us individually and collectively simply an expression of opinion upon the practicability of the present revised Bill as it stands, and that any views and opinions as to the general policy of the measure are beyond the scope of present discussion.

CHAPTER I.

PRELIMINARY.

3. *Sections* 1-3.—I have to draw attention to the absence of any definition of the term "lease" as used, *e.g.* in section 95 of the Bill, and I would point out the fact that a distinction is drawn between a lease and another agreement.

Section 95 (1).—A ryot not bound by *lease* or other agreement for a fixed period may, &c., &c.

CHAPTER II.

4. *Classes of tenants, &c. &c.*, 4 *and* 5.—On the question as to whether the definition of a ryot in section 5 (3) covers all classes of ryots—those holding under unregistered lakhirajdars as well as under the holders of revenue-paying lands, we gave an opinion unanimously in the negative. At the time of the permanent settlement persons were found in possession of certain specific portions of land on which Government revenue was assessed, the owners, however, being directed to pay such through the owners of the parent estate. Such persons, sometimes known as shikmi tenureholders, are neither proprietors nor tenureholders under the definitions in the draft Bill, and consequently their ryots do not come under the definition in section 5 (3). These unregistered lakhirajdars may be virtually ryots themselves or virtually tenureholders, according as they cultivate themselves or receive rents from cultivators. In the former case their ryots become under-ryots, and are excluded from the benefits conferred by the Bill.

On a discussion upon the question as to whether the presumption in section 5 (5)* is with reference to existing practice a fair presumption, and if not fair, what presumption of the sort would be fair, the Collector of Patna stated his experience as going to shew that holders of as little as 100 bighas seldom, except in the case of diara lands, sublet their holdings at all, so that the proposed presumption would be practically inoperative in his district. The experience of the Collectors of the remaining districts tended in the same direction, and the Collector of Chumparun proposed that, regard being had to existing facts, as demonstrated by general experience, the standard of 100 bighas was too low to justify the presumption being raised. The Collector of Mozufferpore declared his objection in toto to the proposed presumption, and moved that in view of the state of existing facts the presumption was entirely unnecessary and should be erased from the Bill. The conference accepted this by a majority, Mr. Boxwell and Mr. Nolan dissenting. Mr. Nolan recorded his dissent on the ground that the omission would multiply the number of under-ryots.

* *Section* 5 (5).—Where the area of a holding exceeds 100 standard bighas, and the whole or part of it is sublet, the tenant shall be presumed to be a tenureholder until the contrary is shewn.

CHAPTER III.

TENUREHOLDERS. ENHANCEMENT OF RENTS.

5. It was stated by all the Collectors, with regard to their respective districts, that no instances have occurred of the rents of tenures being enhanced under suit. It was decided that as sections 7-10 do not apply to Behar they required no comment.

CHAPTER IV.

Ryots holding at fixed rates.

6. Mr. Norman and Mr. Henry urged that with regard to these ryots holding at fixed rates there ought to be added a stipulation such as that applying to occupancy royts under section 31 (*a*)* (the latter part of section 31 (*a*) being omitted). An instance cited as rendering this addition necessary was that of a person holding a small piece of land at a fixed rent, and finding that it would be profitable to convert it into a brickfield, having accordingly done so, and made his profits in one lump sum, he then threw up his holding, which, having been rendered totally unfit for the purposes of agriculture, was useless in the hands of the landlord, who thereby lost the rent for ever. After considerable discussion, the conference adopted the proposal that to section 23 (*b*) there should be added the ground of exception—"That he has used his land in any manner which renders it unfit for the purposes of the tenancy."

Section 23 (2).—A ryot holding at a fixed rent or rate of rent (*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as a tenureholder and (*b*) shall not be ejected by his landlord *except on the ground* that he has broken a condition consistent with this Act, and on breach of which he is under the terms of contract between him and his landlord liable to be ejected.

* *Section* 31 (*a*).—An occupancy ryot may use the land in any manner which does not render it unfit for the purposes of the tenancy (but shall not be entitled to cut down trees in contravention of any local custom).

Mr. Nolan alone dissented strongly; he declared that he objected to a proposal which limited the purposes for which a ryot holding at a fixed rate can use his land, on the following grounds:—

(1) That no such limitation at present exists.
(2) That no practical inconvenience arises from the present rule.
(3) That any limitation on the use to which the land may be put will be used for the purposes of harassing the ryots.

CHAPTER V.

Occupancy Ryots.

7. On a proposition by Mr. Boxwell that the words "*or estate*"† should be eliminated from the chapter, the village or mouzah being thus left as the limit, it was pointed out by Mr. Henry that the estate of Ahrowli in Chumparun, consisting of 1,185,867 acres, and covering more than half of all the revenue-paying land in the Chumparun district, was, along with others, an instance of a large estate in the case of which very serious consequences would result from the wording of the section, coupled with the provisions of section 27 (*b*)‡.

† *Section* 25 (1).—Every settled ryot of a village *or estate* shall have a right of occupancy in all land held by him as a ryot in the village *or estate*.

‡ *Section* 27 (*b*).—Where two or more estates have been created by one or more partitions taking place &c., &c.

Mr. Henry, however, in concurrence with Mr. Nolan, expressed disapproval of the amendment proposed, they arguing that the effect of the section as it stands is to greatly increase the number of occupancy ryots; that this is one of the objects to be aimed at, and that the amendment would simply and directly counteract it.

It seemed to me, as I pointed out, that the end sought might be attained (if the object is to attain it completely) in a much less round about manner by granting to *all ryots* the right of occupancy—a concession, however, which I was not the least prepared to support. Mr. Nolan dissented from the proposal on the further ground that the amendment would alter the definition of a settled ryot, which according to the instructions contained in the letter now under reply is not now open to general discussion. In answer to this latter point I drew attention to the report of the Select Committee, chapter V, paragraph 11, clause 2§; also to paragraph 12 of the same report‖, and to Government of India's letter, paragraph 8¶, and I urged from the remarks there and elsewhere made that the conference was acting within its powers in suggesting the amendment proposed by Mr. Boxwell. Eventually the amendment proposed was carried (Mr. Henry and Mr. Nolan dissenting).

§ *Select Committee's report, chapter V, paragraph* 11, *clause* 2.—"We desire to learn if the Government of Bengal consider that in those exceptional estates any known fiscal or administrative area can be advantageously *substituted* for the area of an estate."

Paragraph 12 *id.*—"Another matter connected with the definition of estate to which we desire to call attention is the provision in section 27 (*b*)"

¶ Government of India's letter No. 784, dated 5th May 1884.

"A preliminary question is raised by the Select Committee as to the definition of estate with reference to exceptionally large estates. These points should now be considered by the Government of Bengal."

8. With regard to section 28** it seems to be a question as to what would be the exact legal relation existing between the outgoing landlord of an estate, who, having bought the interest of a ryot with the right of occupancy in the estate, is sold out immediately afterwards for arrears of revenue, and the incoming landlord in respect of the aforesaid land, more especially should such land be in cultivation.

** *Section* 28.—If the landlord of a ryot having a right of occupancy acquires by purchase or otherwise the interest of the ryot, the occupancy right shall cease to exist, &c., &c.

The actual custom appeared to vary in different districts and in individual districts, and the point is one which is the source of many disputes and disturbances. Sometimes it is accepted that on the sale for arrears of revenue the outgoing landlord would *ipso facto* lose all interest in the land; at other times it would seem he developed into a non-occupancy ryot. The point is one which requires consideration, but we are not prepared to make a definite proposal.

9. *Section* 29 (1), (2) —We wish to draw attention to the wording of section 29 (2), which section seems to be badly put in the Bill :—"A person holding as an ijaradar or farmer of rents" could not in any conceivable way "*by such holding* acquire right of occupancy in the land." As the words stand they are unmeaning.

Section 29 (1).—A person holding as a ryot shall not be prevented from acquiring an occupancy right, &c.

(2) A person holding as an ijaradar shall not by such holding acquire a right of occupancy in the land, &c.

What seems intended is this.—"If an ijaradar or farmer of rents obtain cultivator's possession of any land inside the area of his ijara, no length of occupation of that land shall contribute to the growth of occupancy rights during the term of his farm."

With regard to sections 28 and 29. These seem to have been misunderstood altogether in the dissent recorded by the late Rai Krishn Dass Pal. The distinction is not as he supposes between a zemindar and other rent receivers, but, first, between a complete or sixteen annas landlord, whether he be a zemindar or a tenureholder, and a partial landlord, or sharer; and, secondly, between a landlord who simply comes into possession of one of his ryot's holdings, and a ryot who happens also to have or acquire another interest in the land. As a ryot's right of occupancy means a right to hold under certain circumstances against the landlord, it goes without saying that where there is no ryot there can be no right of occupancy There seems to be no objection to these sections if they are properly worded, when they will amount to this—Section (28). If a complete landlord gets lawful possession of a ryot's holding, the ryot's right of occupancy of course ceases. 29(1). If a ryot also becomes or is a partial landlord there is no great reason why he should not acquire and hold occupancy rights against the other partial landlords. 29(2). There is every reason why a temporary landlord should not be permitted to use his lease to acquire permanent rights against the real landlord.

As regards again to the second part of section 29 (2), it might be very easily evaded by the ijaradar if he were to declare that he has not gained the right of occupancy as an ijaradar, but as a ryot cultivating the land for so long.

It would seem also that section 28* would be of very partial application as a remedy against occupancy rights being purchased by the proprietors of estates, as it meets the case of the sixteen-anna proprietor only, who is thereby prohibited from acquiring occupancy rights on land situated in his estate. Thus any person with a fifteen-anna eleven-pie proprietary interest, or even with a larger interest, provided it be less than the full sixteen annas, can, under the provisions of section 29 (1)† in its present form, acquire occupancy rights in any land in the estate. A large proportion of estates are not held in sole proprietorship, and the effect of section 29(1) would be that of occupancy rights being acquired wholesale by the proprietary body—a result not to be desired and obviously conflicting with the provisions of section (28). At the same time section 29 does not provide for the case of a ryot who, having acquired a right of occupancy on the land constituting his holding, subsequently acquires by purchase a share in the estate on which his holding is situated.

Vide supra.

† *Vide supra.*

With the view of meeting these cases Mr. Henry suggested that section 29 (1) should be omitted, and the following words substituted :—"A ryot having a right of occupancy in land shall not lose it by subsequently acquiring a share in the estate in which the land is situated; but if any person jointly interested in the land as proprietor acquires by purchase or otherwise the interest of the ryot, the occupancy right shall cease to exist." On the other hand Mr. Nolan drew attention to the position of certain maliks in Shahabad who were at the same time shareholders in the proprietary right of the village and occupancy ryots paying rent to the general body of village proprietors. He considered that it would be undesirable to deprive these men of their existing occupancy rights, or of the opportunity of acquiring them in future.

Mr. Forbes suggested that the difficulty would be solved by omitting 29(1) and by inserting in section 28 after the word "landlord" the words "or part landlord," and after the word "otherwise" the words "except by actual cultivation" the object being to give rights of occupancy to actual cultivators without respect to the fact of whether they happen to be actual proprietors or not; the case of such persons is very different from that of proprietors who acquire the interest of ryot by purchase or transfer or otherwise than by actual cultivation. Mr. Norman objected that any provision enabling proprietors to acquire rights of occupancy in their estates must necessarily be tantamount to giving them the power of increasing their khamar lands—a result which would be undesirable and contrary to the principles of the Bill

10. Mr. Nolan suggested an amendment to section 31 (*a*), proposing to insert after the word "tenancy" the words "and also of less letting value than it was when used for that purpose" He said that the object was to give the occupancy ryot full and free use of his land, so that he should be allowed to put it to any purpose, provided that he did not diminish its present or prospective value, or the value of any other land in the neighbourhood. Thus he might not be allowed to make it into a brickfield, or to build a liquor shop on it; while there would be no objection to his building a sugar-mill, if he thereby increased the value of the land The power to prevent what would increase the value of his property would, Mr. Nolan urged, be useless to the zemindar except for purposes of extortion. It seemed to me that the amendment would act harshly on the landlord as the onus of proving two things

Section 31(*a*) —He may use the land in any manner which does not render it unfit for the purposes of the tenancy, but shall not be entitled to cut down trees in contravention of any local custom.

would lie with him, first, that the land was being put to an unsuitable purpose, and, second, that the letting value was thereby decreased, and I pointed out that it is the *agricultural ryot*, for whose protection we wish to legislate, and not the ryot who converts an agricultural into a town holding ; and this was the view taken by the majority.

11. In section 31 (*d*)* Mr. Nolan proposed the substitution of the words "but his interest in the holding may be sold" for "except in execution of a decree for ejectment passed." He thought that where an occupancy ryot used his lands improperly, or broke a condition of his lease consistent with this Act, his right ought not to be forfeited by his eviction, but that the landlord's remedy should be by obtaining damages in the manner suggested by section 170† of the Bill, and that these damages should be recoverable in the same way as rent. He argued that the payment of rent was the primary obligation of a tenant, and that, when the penalty of eviction was not attached to a violation of this primary condition there could be no reason for its infliction for breaches of secondary conditions. He did not see why he should be deprived of the value of his occupancy right, provided that the loss caused to the zemindar by his default were made good, and he thought that there would be danger of vexatious suits for ejectment being brought if such were allowed. The conference supported this proposition, the Collector of Durbhunga alone dissenting, and expressing his opinion that not only ought the grounds of ejectment already specified in the section to be retained, but that an additional ground, viz. the non-payment of arrears of rent in execution of a decree should be inserted. He considered that the proposed amendment would deprive zemindars of the benefit of a most effectual incentive towards the payment of rent.

Section 31 (*d*).—"He (the occupancy ryot) shall not be ejected by his landlord from the land except in execution of a decree 'passed on the ground,' &c."

† *Section* 170.—Relief againt forfeitures.

12. Section 31 (*f*)‡ was then taken up and discussed at considerable length. Mr. Norman began by proposing that the sub-section should be altered so as to run thus: "The private transfer of an occupancy right to any person other than a ryot or actual cultivator shall have the effect of extinguishing such occupancy right." In this way Mr. Norman aimed at invalidating and so discouraging the wholesale purchase of occupancy rights by mahajuns or other land-jobbers. But Mr. Henry said the mahajun is nine times out of ten himself a cultivator, and would thus evade the stricture proposed by Mr. Norman, who, on the other hand, said that his experience was that the land-jobbing mahajun was not often a cultivator, and further urged that his amendment would enable Government to enlist the zemindar on its side and so detect the mahajun who falsely represented himself to be a cultivator, while in reality a land-jobber.

‡ *Section* 31 (*f*)—His right of occupancy in the land shall, subject to the rights reserved to the landlord by this Act, be capable of being transferred and bequeathed by will in the same manner and to the same extent as other immovable property.

Mr. Nolan thought that the real end was to prevent subletting, and that the danger of mahajuns and land-jobbers buying up occupancy rights was imaginary. His experience in Shahabad was that mahajuns did not buy up even guzashta rights, but that on the contrary occupancy rights were bought by good cultivators from bad and unsuccessful cultivators. The effect of the power to transfer was in itself, he considered, good, and amounted to the cultivation of the land getting into the best hands, which must be an advantage. "The successful cultivator buys, and the unsuccessful cultivator gets rid of the land," he found to be his experience.

Mr. Henry said that his own experience went to shew that there is a real danger of non-agriculturists getting hold of the land if the right to transfer is recognized at all. His advice was that custom should be left alone and allowed to consolidate, and that at the same time private transfer should not be expressly legalized; and he accordingly proposed the total exclusion of clause (*f*) as an amendment on Mr. Norman's motion The conference was fairly divided on this point, but ultimately Mr Henry's amendment was carried, and Mr. Norman's lost by my casting vote.

13. We wish to draw attention to the word "immediately" in section 36 (*c*), and to point out that in the case of a landlord and thicadar, the former would thereby be barred from acting should the latter refuse to act. The thicadar might thus become a dead-lock.

Section 36.—For the purposes of the last four sections the term landlord shall mean exclusively either (*a*) a proprietor under whom *immediately* the land is held by the ryot; (*b*) a permanent tenureholder under whom *immediately* the land is held by the ryot; or (*c*) any other tenureholder under whom *immediately*, &c.

14 With regard to the section on pre-emption (sections 32 to 36) Mr. Norman moved that the provision therein contained should be omitted from the Bill, as introducing a needless complication. He urged that if proper restriction on transfer be enacted there can be no possible ground for the provision, which must involve an amount of trouble and legal procedure injurious to the best interest of an agricultural community. Mr Nolan, in supporting Mr Norman, considered that the right of pre-emption by the landlord must greatly diminish the value of the occupancy right to the tenant wishing to sell; that it was something quite new and untested by experience, and ought not, in his opinion, to be introduced. He thought that great practical difficulty would arise, because the ryot would know nothing whatever about something so new, and sales would go on as before without it, and would be made invalid by section 32 (5)*—an objection, however, which Mr Henry remarked would apply to any new law. The object, he argued, was to prevent the

Section 32 (5)—If a ryot sells his occupancy right to any other person than the landlord without having filed the notice required by this section, or within the period of six weeks from the notice being filed, the sale shall be void as against the landlord.

extinction of occupancy rights, while this pre-emption provision was brought in with the express propose of killing those very rights which ought to be fostered. I was of opinion that the zemindars themselves did not seem very eager to secure the right, and that in some cases they might be compelled to exercise it again and again against their wills, and to their own loss. It was urged further that the zemindars would not have to exercise the right unless they chose, so that they could not be in a worse position with it than without it, and that they did not appear to lay much stress on the value of the right, because it was acknowledged to be a rather shadowy one. New settlers and rival mahajuns getting into a village often make endless trouble, and it was not clear why the old landlord should not have the right over them at least. The conference was again fairly divided on this question, and the motion for omission of pre-emption was carried by my casting vote.

15. Mr. Nolan said that section 34* assumed that the occupancy right might be mortgaged, and to this he entirely objected. He thought that mortgage ought to be prohibited altogether, for he was sure that many a ryot who would not sell his holding would be ready to borrow on it when in need of even a few rupees for the celebration of a marriage or other ceremony; who, were he not permitted to raise money in this way, would simply do without it. The mortgaging system seemed to him to allow the money-lender to step in and involve the poor cultivator in deeper and deeper difficulties. He characterised the power to mortgage as most insidious and dangerous in the hands of the cultivating class. I was of opinion that the ryots could do very well without the power, for, as a matter of fact, I believe very few regular mortgages, *i.e.* with foreclosure, take place. Mr. Forbes and Mr. Vowell had dissented on the ground that by the prohibition of mortgage the ryot would be forced to sell in order to tide over temporary difficulties. Mr. Forbes further suggested, as a way out of the difficulty, the prevension of foreclosure, so that the mortgages would be converted into a simple sub-lease Mr. Boxwell was unwilling to record any vote on the ground that mortgage was included in transfer, and it had already been decided to abolish section 31 (*f*) (*vide supra*), and by so doing to leave the question of transfer alone. Mr. Henry also preferred to allow mortgage and other forms of transfer of occupancy rights to be governed by custom as at present. When a ryot now requires money to tide him over any temporary difficulty, he is able to borrow it from the village mahajun, the money not unfrequently being lent on bond, and it is only when the amount due has become large that the mahajun demands as security a portion of the ryot's holding in mortgage. To decide that a ryot shall not be allowed to mortgage his holding would be to compel the mahajun, who may wish for security for the debt, to sue on the bond in order to get the ryot's holding put up to sale; whereas, under existing practice, he would have been satisfied with obtaining a mortgage over a portion of the holding as security. Section 97 allows the court no discretion, as it declares that a ryot's holding must be transferred as a whole. The result therefore of compelling mahajuns to sue for money due to them by the ryots would be to bring to sale innumerable ryoti holdings. Existing custom allows the ryot to make over just so much of his land as may be sufficient to furnish security for his debt, and with this the mahajun is satisfied. What useful end would, it was asked, be attained by compelling the mahajun to sell up the ryot's whole holding as the proposed amendment would practically have the effect of doing? The motion to prohibit mortgage was eventually carried by my casting vote.

* *Section* 34.—Where an occupancy right has been mortgaged by the ryot, &c.

16. We were of opinion that section 37 was simply impracticable, inasmuch as it depended entirely on registration, and there was no guarantee for its practical working, and we recommend that it should be expunged from the Bill.

Section 37.—If the portion of his holding, sublet by an occupancy ryot, *exceeds more than one-half* his holding, he shall, on being registered in a public register as a tenureholder under any Act which may be passed for the registration of tenureholders, be deemed to have become a tenureholder within the meaning of this Act: provided, as follows, &c.

The words "exceeds more than one-half" are an obvious tautological error.

17. In connection with section 41* we agreed to record our decided approbation, but with the remark that officers at present registering under the Indian Registration Act are unfit to properly discharge the duties of registration under this section.

* *Section* 41.—Enhancement of rent by registered contract.

18. In considering section 43†, Mr. Norman moved that the words "enhancement" and "reduction" should be discarded. The old grounds of enhancement, viz. the rate of rent being below the prevailing rate, and increase of the productive powers, he said, full and prolonged experience has shewn to be absolutely unworkable, and clauses (*a*) and (*d*) simply repeat them. As regards clause (*b*) (rise in prices) prices perpetually vary and are far too unstable a guide for the purpose. Almost any conclusion desired might be twisted out of 15 years' price lists. There is, moreover, no reasonable guarantee for the accuracy of such price lists. He urged that the words of the Government of India's letter No. 7841, dated 4th May 1884, may be altered and applied to the case. The cost of cultivation is quite as important a factor as the price of produce, and if any one fact is clearly brought out on enquiry, it is the impossibility of ascertaining the cost of cultivation with any degree of accuracy. The evolving the true rent of land out of statistical data is a mere dream and delusion, which may look well on paper, but is impossible in practice. Any scheme drawn out on these plans must fail, if only on account of the multiplicity, complexity, and variety of the circumstances on which the true rent depends, which circumstances constitute

† Enhancement of rent by suit.

a problem incapable of independent solution by courts of law guided by the rules of evidence. He also urged that there exists one standard and criterion in fixing a fair and true rent, viz. the ascertained rate in the market, that is the rate which would be fetched by the land, if publicly offered for sale. The rate so ascertained is a rack-rent, and it would not be consonant with the principles of modern legislation to admit the exaction of a full rack-rent; consequently a reasonable reduction in favour of the ryot should be made; the rent so reduced would be the equivalent of the vague expression "customary" or "prevailing" rate. There need be no insupurable difficulty in obtaining the market rate, or it can ordinarily be established by the testimony of experts and by documentary evidence. He therefore strongly recommended that the words "enhancement of rent" and "reduction of rent" be altogether discarded as unnecessary and ill chosen expressions. *He would give either party the power of applying to the court under proper restrictions to fix a judicial rent.* These views, however, did not meet with the support of the conference. Mr. Price was of opinion that the grounds of enhancement in section 43 were very good. As regards enhancement on the ground of *prevailing rates* he was of opinion that its retention was most necessary. He stated that whatever cases of enhancement had been decided in Durbhunga, the basis of the decision had always been the prevailing rate, which, he thought, undoubtedly existed and could be evolved easily. There was no reason, he said, why a ground of enhancement which landlords had utilized, and which had been found quite workable, not only in ordinary zemindaries but in Government estates, should not be retained. In respect of enhancement on the ground of the rise in prices of food-grains, he admitted that materials for comparing prices during different quinquennial periods were not sufficiently ample or accurate; but this difficulty, he foresaw, would be lessened year by year and got over by improved accuracy and method in the compilation in every Collector's office of the agricultural statistics of a district. The remaining grounds he refrained from commenting upon as they would be limited in operation.

19. Mr. Boxwell was willing to accept the grounds given for guidance in enhancement, and he further proposed an accurate method of determining a fair rent through net profits. He disapproved of the idea of fixing any maximum—an idea which he considered entirely delusive, as it would fail to meet the worse cases In cases of originally low rent followed by improvements not made by the tenant, the landlord would receive much less than he was in justice entitled to. It would, he admitted, do a great deal of good in medium cases. Mr. Boxwell thus stated his proposal:—"Let a rational rent be defined to be a portion of the surplus over cost of production of the gross product of the unit of area. As the poorest land pays no rent, and as the best land can pay very high rent, still leaving the cultivator a good profit, it follows that a fair rent is not a fixed but a varying part of the net produce, and that the rent increases as the land gets better. From these conditions it also follows that in passing from the best to the worst land in cultivation, a point will be found where the landlord and the tenant divide the surplus equally. If this point is very low down in the scale of fertility, the rent is very near the ideal limit of a rack-rent. If very high up, it is very favourable to the tenant. A high revenue authority could declare at what point this equal division should take place. The fertility should be expressed in terms of the cost of production. The simplest would be this—Where 'the total outturn' is three times the cost, let the surplus or two-thirds be divided equally: I would prefer a point slightly higher up and slightly less simple: where the total outturn is four times the cost, let the surplus or three-quarters be divided equally. Then let this half surplus thus fixed on be the unit of calculation.

"To determine a fair rent for any quality of land, apply the following rule:—

"(*a*) Express the surplus in terms of the unit of calculation.

"(*b*) Divide it then into square root and square, and let the ryot's share be square root, and the landlord's the square.

"The meaning of the rule is that as we sink below unity, squares diminish rapidly; and as we rise above unity, the squares increase rapidly; while all about unity squares are almost as their roots."

Mr. Boxwell laid particular stress on the adjustability of his formula. Mr. Nolan pointed out that the effect of this adjustability was that the rent desired might first be fixed and the formula adjusted to suit it. He considered the proposed scheme like other schemes based on the net produce—impracticable, but was ready to acknowledge that it was the best scheme of the kind that had been brought to his notice.

We are all of opinion that the proposal should be submitted in the report without any expression of opinion by the conference thereon.

20. Mr. Vowell suggested that (1) no rates of rent other than those fixed by decree of court should be considered in evidence of the "prevailing rent," unless they could be shewn to have been current for five years, and (2) that, as in the letter of the Government of India, paragraph 13, it was stated that the object of the second ground of enhancement was to save the landlord the loss on the depreciation of silver. A far better criterion than price lists would be the course of the exchange which could be easily ascertained in Calcutta, while local prices are determined by the quantity of produce in the market *and* the quantity of silver in the market, and the former might under certain circumstances counterbalance the latter.

21. With regard to subsection (*b*) Mr. Henry pointed out that a rise of prices might be due to a falling off of outturn. He thought that the ryot very often lost as much by

exhaustion of the soil, caused by constant cultivation, as he gained by a rise in prices. It is often said that land now, owing to unfavourable conditions of rainfall, does not yield as much as it did 25 years ago. Prices are to a great extent regulated by the amount of produce available for sale, and partial failure of the crops has a marked effect on that amount; for the ryot first puts by what is necessary for his own consumption and brings the surplus to market. Thus the rise in prices is out of all proportion to the actual failure of the harvests. Why, therefore, should a ryot; who has already suffered from a bad harvest, have to pay enhanced rent because there has been a concomitant rise in the prices of food-grains. At the same time, while admitting the force of these and similar objections, he would accept a rise of prices as a valid ground of enhancement in default of a better.

22. Mr Forbes ultimately moved that to the section should be added the words "provided that the enhanced rent decreed on the grounds given in subsections (*a*) and (*b*) shall not in any case exceed one-fifth of the estimated average annual value of the ordinary produce of such lands calculated at the price at which the ryots sell at harvest time. In bringing forward his motion Mr. Forbes pointed out that in this way the landlord wishing to enhance his rent of his occupancy ryots would have to prove both that the original rent is below the prevailing rate and also that it is in itself an unreasonably low rent. There seemed to be no other effectual way of protecting occupancy ryots from a gradual enhancement of the "prevailing rate" until it will practically become a rack-rent. Even the best landlords are gradually raising the rents of the lands on which the ryots venture to grow special crops year by year, on the principle of leaving to the ryot as small a margin of profit as will suffice for his subsistence. Mr. Forbes represented that even in the Hutwa Raj, belonging to one of the best and most liberally-minded landlords, he knew the rents of poppy lands being in many villages run up to Rs. 20 per bigha. Where a ryot by energy and industry, and specially by the full employment of the women and children of his household succeeds in cultivating a specially delicate and valuable crop, it is surely fair that he and not his landlord should be allowed to reap the bulk of the reward. Mr. Forbes laid stress on the use of the words "such lands" for two reasons—(1) to prevent the ryots refusing to cultivate the best paying crops, which may, as a general rule, be taken to be the crops preferred by the body of his fellow cultivators; and (2) to prevent the landlord from immediately pouncing on a ryot who ventures to cultivate some other than the usual crop. As regards the supposed difficulty in ascertaining the value of the "ordinary" crops in any particular case, this, to a great extent, was imaginary. It will not be the preparing of statistics over a large area, with necessarily varying and conflicting results, but the question in each case will be localized to some particular village. The onus will be on the landlord: the rubutting evidence with the ryot. Each side will be in possession of the full facts of the case, and the court thus be in the best position to ascertain what they really are. He would further recommend that the trial of rent suits be restored to the revenue authorities, and satisfactory results would be still more readily obtained.

23. As regard the proportion of the maximum, Mr. Forbes was himself in favour of fixing it at one-fourth, but, in deference to the opinion generally expressed by us, altered it in his motion to one-fifth. Mr. Nolan pointed out that one-fifth was the proportion fixed in the original Bill, and that it was the more likely to find favour as it had already received support generally up to this the latest draft. The abolition of the maximum had taken place, Mr. Nolan said, since the original Bill, and he was strongly of opinion that it should be reimposed in the form of a fixed proportion of the gross produce. Some maximum in this form he (Mr. Nolan) considered imperative to meet the cases of rents already excessive. He pointed out that in many cases in both Bengal and Behar rents were excessive, and if no limitation were put on enhancement, even these would be enhanced on the ground of a rise in prices or the prevailing rate.

Mr. Price and Mr. Boxwell were entirely dissentient, and Mr. Vowell objected to it as expressed in terms of the gross produce. Mr. Norman reiterated his objection to the section in *toto*, but if the section was to be retained, he would be willing to vote for the motion on it. Mr. Nolan, in recording his vote for the motion, said that he would prefer to have it expressed exactly as it appeared in the original Bill.

24. Mr. Nolan, seconded by Mr. Norman, suggested that sub-section (*a*) should be abolished. Mr. Forbes said that he was willing to vote for the suggestion as an alternative in case of his own amendment not being adopted and acted upon by the Government. I supported the proposal made by Mr. Nolan for the reasons given by Mr. Reynolds in his minute of dissent on the report of the Select Committee for considering the retention of the prevailing rate as a ground of enhancement to be fraught with serious danger.* Mr. Price and Mr. Vowell alone dissented, and the conference, in supporting Mr. Nolan's proposal, adopted Mr. Forbes' suggestion as an alternative, in case it should be determined to retain in the Bill the provision as to the "prevailing rate."

* *Extract from Mr. Reynolds' minute of dissent.* "As agricultural holdings must from time to time fall into the hands of the landlords, and as the landlords are left free to let these out at almost any rental they may think fit to demand, it is evident that the prevailing rate will steadily increase, and that this rate will regulate the rents not only of tenants newly admitted to occupation, but of the general body of the tenantry."

25. With regard to clause (*b*), section 43, we considered that the word "food" before the word "crops" should be omitted, on the ground that some crops which are not *food* crops are subject to very slight fluctuations, while others which are food crops are subject to very great fluctuation. Mr. Nolan said that, as far as his experience went, opium underwent

very few fluctuations, while very great fluctuations had taken place in rice and sugarcane. Mr. Henry said that in Chumparun there were about 70,000 acres of indigo which statistics would show were affected by very little fluctuations, and indigo was not a food crop.

26. In connection with sub-section (*c*), on the subject of improvements as a ground of enhancement, we were of opinion that no definite limit could be set up as a maximum. In the case of taking up parts followed by great improvements made not at the expense of the tenant, the landlord would be entitled to a very large enhancement, a limit to which it would be quite impossible to fix.

27. In connection with sections 44(*a*) and 45(*b*)*, and with reference to the Government of Bengal's letter under reply, paragraph 10, clause 3, in which it is asked whether a more uniform rate of increase is desirable or not, we were of opinion that the rate should be assimilated. The ground for having any such limit on enhancement is that of sudden hardship, which would apply equally in both of these cases.

* *Section* 44(*a*).—The enhanced rent shall not exceed more than eight annas in the rupee (in the case of enhancement on the ground of the prevailing rate).
Section 45(*b*).—The court shall not enhance the rent so that the enhanced rent exceed the previous rent by more than four annas in the rupee (on the ground of a rise in prices).

28. The case of "deara" lands come in under section 47. The effect of the section would be unfair to the landlords, as in the case of deara lands the rent is often fixed at first at an exceedingly low rate, the result of fluvial action may be to increase the productive powers of the land tremendously, and an increase of only 25 per cent. might be as good as nothing to the landlord. We propose to strike out clauses (*a*) and (*b*).

Section 47.—Where an enhancement is claimed on the ground of an increase of productive powers due to fluvial action—
(*a*) The court shall not take into account any increase which is merely temporary or casual.
(*b*) The enhanced rent shall not exceed the previous rent by more than four annas in the rupee.
(*c*) The court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than half the value of the net increase in the produce of the land.

A further proposal to alter (*c*) by striking out the words "half the value of the net increase" and substituting the words "one-fifth of the gross produce" was met by the objection that then one-fifth of the gross produce would be treated not as a maximum rent, but as the general rate of rent, and the tenants of deara lands are, owing to the uncertainties incident to their tenures, frequently rather badly of. We also considered that the effect of the imposition of the limit of one-fifth of the gross produce would be ruin, pure and simple, to the landlord.

29. At the suggestion of Mr. Nolan we agreed to recommend that an explanation should be added to section 48, to the effect that under it the court might consider any allegations by the ryot in his defence as to an increase in the cost of production, the fact that the rent sought to be enhanced under section 43 (*b*) was excessive from the first, or that the prevailing rate to which it was sought to enhance under section 43 (*a*) was excessive—allegations which, if proved, would be grounds for abatement—should be considered by the court when alleged as a set-off or a defence in suit for enhancement.

Section 48.—The court shall not in any case decree any enhancement which appears under the circumstances of the case to be unfair or inequitable.

30. With regard to the enquiry made in paragraph 10, clause 2, of your letter under reply, as to whether enhancement should be allowed out of court in cases of increased prices or fluvial action, *to the same extent* as in court, where the landlords claim in all its bearings, would be subjected to the closest examination under a judicial enquiry, we consider unanimously the answer to be in the affirmative.

Under section 41.

31. *Section* 50.—We wish to record our decided and unanimous approval of section 50.

32. It would appear that an additional clause (*c*) should be added to section 51 as follows:—

Section 51.—Reduction of rent.

"Where rent has been enhanced on account of a landlord's improvement, on the ground that this improvement has ceased to affect the land beneficially, or that the landlord's interest on the improvement has ceased." A case, Mr. Henry said, had occurred in the Chumparun district, which bore upon this. The Modhuban Zemindar, at the suggestion of the Collector, spent a lakh of rupees in constructing a canal. His public spirit was rewarded by the bestowal on him of the sanad of Roy Bahadur, and he recovered through the court a satisfactory return for his capital in the form of enhanced rents from the lands beneficially affected. Subsequently, it was pointed out that the waters of a public river could not be passed into a private canal, and that consequently, unless the canal were taken up under the Land Acquisition Act, and made a public canal, troublesome legal complications were likely to ensue. The Modhuban Zemindar agreed to waive all claims to proprietory interest in the canal, on the Government repaying him with interest the money expended on its construction. This the Government agreed to, and the control of the canal passed into the hands of the Irrigation Department, who may be of opinion that water-rates should be levied from the cultivators using the water for irrigation, while the ryots would very naturally urge that they have already been paying for the water in the form of enhanced rents. Such a case as this would seem to render some addition of the kind suggested by us highly necessary.

33 There seems to be an inconsistency, which we think it advisable to note, between section 52, under which the preparation of lists of *prices at harvest time* is spoken of, and the sections on enhancement where the expression *average prices* is used.

Section 52.—Commutation of rent payable in kind.

34. In connection with the remarks made in paragraph 14 of your letter, we would point out that price-lists are not *averages*, but lists of prices prevailing at particular places. The information given by the Collectors of the several districts with regard to price-lists will be found among the appendices.

Section 53.—The commutation of bhaoli into nakdi.

35. Mr. Boxwell proposed that the commutation of bhaoli into nakdi should not be permitted without the consent of both parties. He argued (1) that the bhaoli system was admirably suited to meet the case of a bad agricultural year; (2) that it tended greatly to the encouragement of improvements such as 'gil-andazi' by the landlord; (3) that it had become restricted to parts of the country specially suited for it; (4) that under it there was found to be much less exportation of food-grains; and (5) that the very natural feeling existed that the majority should not be forced by the minority. Further, he stated it to be his experience that the bhaoli system was more popular in his district than the nakdi, with both landlords and cultivators.

There was a divergence between the opinions on this point of Mr. Boxwell and of Mr. Nolan. Mr. Nolan said that the effect of the nakdi system, as compared with the bhaoli, was plainly to increase the industry and gross produce of the country, and that therefore the question was not one of landlord and tenant, but one of national importance. Bhaoli lands were, he observed, always badly cultivated, as the tenant had but half the incentive to industry given by the nakdi system. If by extra diligence and labour he were to increase the production of his lands by an outturn of four maunds, he would, under the nakdi system, reap the whole advantage, while under the bhaoli he would gain only half the increase, the other half going to the landlord. He had observed that the commutations of bhaoli effected in Shahabad were invariably followed by better cultivation and increased production, and therefore the country had an interest independent of the parties in securing the conversion. All necessity for the landlord's interference in the matter of irrigation had been obviated in a great part of Shahabad by the construction of Government canals. His local inquiries in the district had shewn that the cultivators were in favour of the commutation, and they had frequently begged him to do what he could to have it effected. The matter should not be left to the zemindar, who probably would not make the commutation at once, even though no loss would thereby arise to him, excepting probably to make much more out of it by-and-bye. The Legislature should therefore afford special facilities for it.

Mr. Vowell said that the bhaoli system prevailed on risky lands, the ryots on which were naturally dead against the commutation. The conversion under the terms of 53 (4 (*a*) would be inapplicable to the Patna district, as the lands settled in bhaoli and those in nakdi were of dissimilar qualities. He objected to sub-section (*b*) on the ground that the accounts must come from the landlord.

I for my part would press for the retention of bhaoli in districts like Gya, which are specially suited for that system, but am prepared to agree in favour of the commutation in such districts as Shahabad, in which circumstances, as Mr. Nolan has pointed out, have altered and the cultivators are themselves eager for it. The conference supported me by taking this view of the matter, and throwing out Mr. Boxwell's proposal by five votes to three. We agreed on the proposal of Mr Nolan that, after the words "ten years" in sub-section 4 (*b*), there should be added the following: "or during any shorter period for which returns may be available, with a deduction not exceeding 25 per cent. in consideration of the tenants taking the whole risk of cultivation, where such a deduction seems reasonable;" and further, that a clause (*c*) should be added, containing these words: "The expenditure of the landlord on water-rates or on the maintenance of village channels, &c., under the system of rent in kind, and the arrangements made on commutation for creating these changes."

36. In connection again with section 53 (1) we agreed, on my casting vote, to the proposal by Mr. Forbes that after the word "apply" in section 53 (1) there should be inserted the words "for special reasons." It seemed distinctly dangerous to interfere with long existing customs without having good and full cause shewn; and we were of opinion that the section as it stood would give too absolute a right to the party desiring the commutation.

Section 56.—Initial rent of non-occupancy ryot.

37. Mr. Boxwell was anxious for the omission of section 56* from the Bill, his object being to equalize the rates for occupancy and non-occupancy ryots by causing all courts to refuse to grant in *any* case a decree for a rent other than a fair and equitable one. The proposal was strongly objected to by us, partly on the ground that if our suggestions previously made be adopted, sufficient safeguards had already been suggested, and partly on the ground that it seemed to us to be useless, as urged by Mr. Henry, to ignore the fact that there must be, with reference to certain lands, a competitive rate of rent. Mr. Boxwell could not see why, when the question of a competitive rate of rent was not raised in the case of occupancy ryots, it should be raised in that of non-occupancy ryots. But though we considered that the objection taken by Mr. Reynolds to this section, on the ground that it could be used as a lever for enhancing the prevailing rate, and thereby screwing up the rents of occupancy ryots, was no doubt of the greatest importance, as we had recommended that the prevailing rate should not find a place among the grounds upon which an occupancy ryot's rent could be enhanced, the objection had practically been met. Section 56 was the zemindars only competitive rate, and if the Legislature were to prescribe and define the limits of the initial rental which a zemindar could demand from a non-occupancy royt, it was quite certain that he (the zemindar) could and would find means to evade the provisions of the law. Where several persons are anxious to enter on a piece of land, none of them

having an actual right to possession, it seems inevitable that the rent the zemindar will receive will be regulated by competition. If the law enacts that this rent shall not exceed a particular limit, the zemindar will accept a *salami*, the amount of which will be the result of competition. It has also to be considered whether it is desirable to compel the zemindar to cultivate through his own servants all his khamar land, and such lands as he acquires possession of under the pre-emption clauses of the Act, by abandonment of holdings, and so forth. If he be allowed to make terms with the incoming ryot, he will be ready to let out these lands, and an opportunity is thereby afforded to the ryot of acquiring an occupancy right in some part of them. If, on the other hand, the law prescribes condition and limits, which render it impossible for the zemindar to let his lands profitably, he will cultivate them himself, and sell the produce, and in this latter case the non-occupancy ryot will be worse off than if he had been paying heavy rent. The proposal for compensation for disturbances (by Mr. Nolan) would have its effect as regulating the initial rent.

38. Under section 58(*c*),* Mr. Nolan said that he was afraid that, if the power therein conferred on landlords should be yielded to them unrestricted, they would boldly make use of it. Zemindars who had interviewed him on the subject had indeed said as much. The non-occupancy ryot would thus run the risk of becoming a vagabond ryot, condemned to move on every ten years. He proposed a remedy on the lines of the Irish Land Act, to the effect that in cases of eviction, to prevent the accrual of occupancy rights provided for by the law, the ryot should get compensation for disturbance and for unexpended improvements. This was the only remedy he could suggest: but he was of opinion that, unless some such provision were introduced, there would be a want of unity in the Bill, and the provisions of section 60 (7)† would be entirely neutralised, not only in the way indicated in the Government of Bengal's letter, but by giving leases for periods of less than twelve years Mr. Boxwell thought that the best remedy would be to assimilate the rates for occupancy and non-occupancy ryots. Mr. Forbes argued that, if registered leases were provided for, they ought to be literally followed. It was a contract into which both parties entered with their eyes open, and he saw no necessity for ignoring its terms and making the proposed provision. Mr. Henry thought that Mr. Nolan's proposals afforded the amount of check required, and the same opinion being expressed by the remaining Collectors, the proposition by Mr. Nolan was adopted.

* *Section* 58.—Grounds of ejectment of non-occupancy ryot (*c*) When he has been admitted to occupation of the land under a registered lease on the ground that the term of the lease has expired.

† *Section* 60 (7).—If the ryot agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy.

39. We notice that no provision has been made in section 58 for ejecting a non-occupancy ryot who does not hold under a registered lease, except on the grounds of his failing to pay rent, if he refuses to pay a fair and equitable rent determined under section 60, or uses the land in a manner which renders it unfit for the purposes of his tenancy, &c. An instance of a case in point was cited, which is not of uncommon occurrence in indigo districts, where the planter allows the ryot to take one crop free of rent off a portion of his indigo land, the ryot being at the trouble of carting seed and manure to the land. The arrangement is one that suits both parties, as the ryot gets a bumper crop off the heavily manured land, and the planter gets his land manured without being at the expense of carting the manure to it. Under the provisions of section 58 as they stand, should the ryot refuse to leave the land after cutting his crop according to the terms of the agreement, the planter has no means of recovering it. Mr. Henry, therefore, proposed that in clause (*c*) for the words "under a registered lease" should be substituted the words "under a lease or other agreement." The proposal was carried, Mr. Price recording his dissent for two reasons: (1) that he had supported Mr. Boxwell's proposal to expunge the section altogether, and so to place occupancy and non-occupancy ryots on the same footing; and (2) that it was in the contemplation of those who framed the Bill to do away altogether with the ejectment of non-occupancy ryots, on the ground of expiry of the lease, save and except in the case of registered leases.

(1). *Section* 60.—Conditions of ejectment of non-occupancy ryot on ground of refusal to pay enhanced rent.

(2). *Section* 58.—Grounds of ejectment of non-occupancy ryot.

40. In connection with section 59,* it would seem that, if a landlord should by any omission fail to serve notice not less than six months before the expiration of the term provided, or to institute the ejectment suit within six months after the expiration of that term, he would be indefinitely precluded from taking advantage of the proceeding for ejectment provided. This does not seem to have been contemplated, and we therefore desire to draw attention to it.

Section 59.—Conditions of ejectment of non-occupancy ryot on ground of expiration of lease.

41. With reference to section 60 (7),* we were unanimously of opinion that khamar lands should be excluded from the provisions of the chapter, so far as its provisions tended to give non-occupancy ryots the right of remaining in possession of the landlord's private land against the will of the latter. It seemed to us that the landlord should have an absolute right to eject a tenant from any portion of such land without payment of any compensation for disturbance on expiry of the term of the lease, or

* *Section* 60 (7).—If the ryots agree to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term, shall be liable to ejectment under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy.

at the end of any agricultural year, should no lease exist. In such cases we suggest that six months' notice might be required. Under section 60(7) as it stands, the non-occupancy ryots would be enabled to remain in possession of khamar lands against the landlord's will.

42. Mr. Boxwell proposed to strike out the remainder of section 62* after the words "more than he himself pays." He thought that the tenant should only be permitted to save himself from loss, or extricate himself from difficulties that might arise temporarily by sub-letting, but that he should not be allowed to make any profit. The necessity for allowing sub-letting so far be granted, but no further, and he continued to hold by the opinions stated by him on the same subject at the last conference. "I myself think," he then stated, "the sub-letting powers the most doubtful and only dangerous part of the Bill. The great object is to secure the cultivator his occupancy at a fair rent, to be transmitted to his heirs as long as the family can last. I see no good in sub-letting. As far as an occupancy ryot is a rent-receiver, he is one of the objectionable class of land-jobbers. His under-ryot is the important man." It seemed to me that it would be altogether impracticable to put a stop to sub-letting altogether, and I drew attention to Mr. Gibbon's remarks in Chapter V of the Bill in his minute of dissent. "As long," writes Mr. Gibbon, "as there exists a class of people craving for the possession of land, and poorer than the people in possession, or a class who can put the land to more profitable use than the persons who at present hold it, or as long as the line which divides an usufructuary mortgage from a sub-lease remains undefined, *sub-letting will be practised.*" Mr. Boxwell urged that he did not wish to prohibit sub-letting altogether, but to discourage it with restrictions. I pointed out that these restrictions would certainly have the effect of a prohibition in the case of such men as the guzashtadars of Shahabad—men who for ages have held land at fixed rates much below what they could have afforded. A hard-and-fast rule of the kind proposed, subverting the whole order of existing things, seems to me quite impracticable.

Section 62.—The landlord of an under ryot holding at a money-rent shall not be entitled to recover rent exceeding the rent *which he himself pays* by more than the following percentages of the same, namely, (*a*) when the rent payable by the under ryot is payable under registered lease or agreement, fifty per cent.; and (*b*) in any other case, 25 per cent.

43. Mr. Forbes brought to our notice that he saw no objection to sub-letting at enhanced rates, provided that rack-renting were prevented, and in order to attain this object, he thought that it should be allowed only in cases where leases were executed for seven years. Mr Nolan, on the other hand, represented that tenants holding as under-ryots at fixed rents should be placed with regard to rates of rent and rights of occupancy on the same footing as ryots holding under tenure-holders, and suggested that, after the word "namely" there should be substituted for the remainder of the section "fifteen per cent." This percentage would just cover the expenses of collection, and so forth, but would not be sufficient profit to encourage persons to make a business of sub-letting, a result which a percentage of 50 per cent., if allowed, might have.

In discussing the question, we took into consideration the fact that the difference in the percentages allowed in the case of registered leases and unregistered leases was evidently made with the view of encouraging registration, and that it was extremely desirable to have leases registered as much as possible so as to bring them under control; and we also gave consideration to the fact that the limit of 15 per cent. might be too low, and that *salamis* would be brought into practice to raise the profit so limited As regards the latter point, that of *salamis*, we were aware that it was only a trick sometimes introduced to defeat the provisions of the law, but its introduction could not be considered as any reason for our not proposing legislation in the proper direction. Mr. Nolan's proposal was carried by my casting vote, Mr Boxwell and Mr. Price refusing to vote on it, on the ground that it was based on a wrong principle, and that they were unwilling in any way to countenance sub-letting.

44. On considering the question in paragraph 13 of your letter as to whether, "with regard to the twenty years' presumption of section 64, clause (2), a fixed proportion of the crop can be fairly considered, having regard to the rise and fall of prices as the natural and equivalent antecedent of a money rent invariable over a term of years," we were of opinion that a fixed share of the produce could in no sense be deemed the equivalent of a fixed rent. A fixed share of the produce gives the landlord most of the ordinary enhancements as occasion arises, while a fixed rent means precisely a rent which does not give the landlord such enhancement, as shown by Mr. Field in his Digest, page 203. On this point Mr. Boxwell was of opinion that bhaoli should be left alone to be governed by custom as heretofore. This, however, I thought would be unsafe, as the point would without doubt be raised after the passing of the Bill, were it to be left indefinite. Finally, we came to the unanimous decision that the twenty years' presumption should apply to bhaoli lands only so long as they remain bhaoli, and should be allowed as a plea in a suit to raise such rents to a higher proportion of the produce on the ground of its being below the prevailing rate.

Chapter VIII.—General provisions as to rent.
Section 64.—Rules and presumptions as to the fixity of rent.

45. In connection with your enquiry in paragraph 6 of your letter, as to whether the presumption embodied in 64 (2) should be retained or not, and as to whether landlords really experience any practical difficulty n rebutting it, if unjustly pleaded, Mr. Nolan

Section 64 (2).—Twenty years' presumption.

pointed out that a difficulty would probably arise through the landlords refusing to enter the year on receipts for rent in order to make the establishment of the presumption more difficult. The chief objection urged against the presumption was the usual one, that on transfers of property, particularly at auction sales, it operates harshly against the purchaser who is placed at a disadvantage compared with the former owner in rebutting the presumption. In the Patna district, on a reference being made to the Government Pleader, who was a member of the Behar Landholders' Association, no instances in which the presumption had worked hardly on the landholders could be brought to light. It did not appear how the presumption could tell unfairly on landlords, as it had been started in 1859, *i.e.*, twenty-five years ago; all landlords must have become acquainted with its existence, and had had ample opportunity for defeating it by raising the rents or even by lowering them slightly with that object. Taking these things into consideration, we are all in favour of retaining the presumption as it stands in the Bill.

46. With regard to section 70, forms of account, &c., none of us had any better suggestions to give.

47. With regard to section 73 (*b*),* it seemed much too vague; and if it were retained, it would be absolutely necessary to have some sanction, such as that imposed by affidavit, in the case of a tenant making false allegations. A troublesome tenant might pay into court simply to annoy his landlord, and as the section stands, he might do so with perfect impunity. On the other hand, it was thought that paying even into court should be encouraged by all means as tending to prevent riots; but again there was the further consideration that the tendency might be in the other direction, as the tenant, by depositing the rent in court, so to speak throws down the glove to the landlord and declares hostilities. Mr. Nolan remarked that the existing law under which affidavits are enforced does not make the ryot tender his rent to the landlord, but merely makes him affirm that he has done so, thus producing endless perjury. Mr. Norman said that it was quite unnecessary to cut out the sub-section, as the existing law provided for cases of false statement made by a person examined under section 74. After much discussion the proposal to omit the section was adopted by the conference by my casting vote. In connection with this, I would draw attention to the provisions of the Bill in regard to distraint as they stand in sections 139 and 140. By clause 2 of section 140, the landlord is distinctly made liable for giving of false evidence upon the application required of him. I fail to see why the provision should be retained for the zemindar, while it is not made incumbent on the ryot.

Section 73(b).—When a tenant has reason to believe that, owing to ill-feeling or dispute, the person to whom his rent is payable will not be willing to receive it, he may deposit, &c.

48. With regard to section 83 (3), Mr. Nolan moved that after the word "produce" be inserted the words "from the threshing-floor," and that the words "appraisement or" should be omitted. He thought that the sub-section would revive the abuse of forcible resistance to the cutting of crops. The landlord would send men to prevent the harvesting, and, if brought for such act before the Magistrate, would reply that he was merely preventing the ryot from doing what he had no right to do. As long as the sub-section remained, he was convinced no Magistrate would convict for such an act, even though of opinion that the zemindar was not acting in good faith. He proposed to leave the ryot free to cut his crop, as at present, subject also, as at present, to the danger of being cast in excessive rice rent in case of failing to procure an appraisement. We were all of opinion that the proposal should be recommended.

49. In connection with the subject of improvements under Chapter IX, the conference, at Mr. Nolan's suggestion, recorded its dissent on the statement of the late Hon'ble Kristodas Pal, that in these provinces, except where the bhaoli system prevails, improvements have been generally made by the landlord. Mr. Norman said that he had never known of improvements effected by a landlord; in every case, in his experience, it was the tenant who made the improvements. In Shahabad, Mr. Nolan found comparatively few instances of improvements by landlords, and during eight years' residence in the Pubna district, he had not seen a single instance, although the district included the estates of some of the most liberal landlords, who nevertheless seemed to regard agriculture as something with which they had no concern.

CHAPTER VI.

50. *Improvements.*—Mr. Henry was of opinion that it was desirable to empower revenue officers to arrange for the cutting of distributary channels, the distribution of water, and so forth, these powers being necessary to enable the authorities to assist the cultivators to get water at times when, owing to the failure of the rainfall or to other causes, the outturn of the harvest should be endangered. He accordingly proposed the following rules suggested to him by the experience of the past year. These did not pretend to be comprehensive, and would not apply to extensive irrigation schemes, being intended only to meet the case of village schemes. If approved of, they might be amplified and rendered of more general applicability. Nor were they intended to apply to schemes provided for by special Acts. They had worked well in practice, and if promulgated would enable the revenue officer in Chumparun to effectually secure nearly half the area of the district from the evil effects of deficient rainfall.

The revenue officer should, on the application of any persons interested, be empowered to construct a bund across any river, the water of which is required for irrigation purposes,

and to distribute the cost of construction among the occupiers of land benefitted by it. In practice the bund is usually constructed by the voluntary labour of the villagers interested, but it would be as well to have a provision enabling the revenue officer to deal with exceptional cases. The revenue officer should be empowered to acquire the land requisite for the distributaries, with a right of immediate entry. In awarding compensation for the land so taken up, a summary award by a local punchayet, nominated by the revenue officer, should determine the injury done to any standing crops and its money value, the cost of the land taken up being paid by the occupiers of the lands benefitted, as also protection charges, such as the pay of chowkidars appointed to see that the *bund* and distributaries are not cut. The revenue officer should have sole control over the distribution of the water, any person disobeying his orders in this respect being made liable to the penalties prescribed under section 426, Indian Penal Code. It was absolutely necessary, Mr. Henry thought, in the interests of the majority, to have the distribution of the water controlled, otherwise individual interests would so conflict as to mar the efficiency of the scheme In practice, he found that the great difficulty experienced in successfully working these irrigation schemes was that of preserving the distributaries uninjured, the occupiers of the land through which they passed being anxious to get the water as quickly as possible, and cutting the distributaries in order to do so without delay. In this way the supply destined for more distant fields was diverted, and the general utility of the scheme greatly impaired. The revenue officers should further have the power to order the demolition or the cutting down to a particular level of any bund, or the construction of an escape channel. These powers were necessary to enable him to prevent such damage as might result from the sudden flooding of the river bunded, a casualty of frequent occurrence in hill streams, which rise suddenly, and which, if completely obstructed by a bund, would spill over the country and cause considerable damage So long as the bund is kept below a certain height, or an escape channel weir of adequate carrying capacity is provided, no harm can result.

These powers the revenue officer would require to extend the benefits of irrigation to villages lower down the stream. When water has been given to villages in a particular locality, the revenue officer should be empowered to divert the full volume from these villages to villages lower down, and this could be effected, either by having an escape channel, or by cutting down the bund to a certain level

51. Mr Nolan agreed to the scheme proposed, insisting at the same time on the revenue officer's proceedings being subjected to the sanction of the Commissioner. The scheme as it stood made the Collector or revenue officer a dictator, and he thought it necessary that it ought to be limited to times of famine or drought, local or otherwise, and that in each case the revenue officer should be invested with special powers. The scheme, moreover was insufficient for larger works, such as bunding a large river, for which a considerable sum of money was necessary; and to meet such cases he proposed that the principle embodied in the Bengal Drainage Act (VI of 1880) should be extended to irrigation Mr. Nolan's proposal will be found in appendix B.

Mr. Norman was not in favour of Mr Nolan's proviso, and considered that a summary remedy was absolutely necessary, delay being the thing to be especially avoided in such cases He agreed to Mr. Henry's scheme, but at the same time had one of his own, which he desired to put forward. He stated that, with reference to the circumstances of the Mozufferpore district, where the land is held by ryots and petty zemindars, much difficulty was experienced in obtaining water for irrigation in times of drought. Water was stored up in jheels and small hill streams, but the want of unanimity among zemindars and ryots rendered it impossible for them to combine sufficiently to construct the necessary weirs and irrigation channels. Quarrels very frequently arose, and in the interests of the agricultural community, it was very desirable that revenue officers should be empowered to take up and adjudicate upon questions arising in connection with such cases, with reference to which summary and immediate action was imperatively required. The Collector's summary orders might be rendered liable to revision by means of a regular suit in the civil court.

It was pointed out that provisions for summary action in cases of disputed right are contained in the Criminal Procedure Code, and the general opinion seemed to be that Mr. Henry's scheme, together with these provisions, quite met the case, and deserved our recommendation

52. In considering section 90, Mr. Henry suggested that non-occupancy ryots should be allowed to construct wells without the landlords' consent. He failed to see what good reasons a landlord could have for refusing to allow what could not be anything but a distinct improvement. Mr. Nolan supported this, and said further that he was inclined certainly to permit every tenant, whether occupancy or non-occupancy, to improve his holding. It was thought that section 90(2) would quite meet the case, but this was answered by the consideration that that section would doubtless be quite impracticable for the purpose, as the ryot would never be bold enough to serve the requisite notice on the landlord Deliberately to deprive the tenants of the right which at present they have for defending themselves against famine and such calamities was to be deprecated most strongly, and this view was adopted by the conference so far as the sinking of wells was concerned.

53. Under section 91 we desire to suggest that the words "or tenant" should be inserted after the word "landlord."

54. We would wish to omit section 94 (*e*) as we do not recognize the justice of the principle that courts should diminish the compensation due to a tenant for an improvement, on the ground that he has had the benefit for a long time at an unenhanced rent.

Such a principle would seem to assume that after a certain time the landlord should have the full right to the work executed by the tenant.

55. Mr. Norman thought that the presumption in section 95 (3)* was unfair and unwise. The probabilities were not sufficiently strong to warrant its being raised, as a ryot might very well have at the same time two different holdings under the same landlord in the same village. This did not receive the support of the majority, but Mr. Norman desired to have it recorded.

* *Section* 95(3)—The court shall presume, until the contrary is shewn, that such notice (of surrender) has been given (*a*) if a ryot takes a new holding in the same village from the same landlord during the agricultural year next following the surrender.

56. In answer to the question raised in paragraph 11 of your letter we were inclined to the opinion that section 96, so long as the present wording was adhered to, contained nothing dangerous to the interests of the ryot; and Mr. Forbes thought that too much protection was thereby afforded to him, and proposed that in sub-section (3) the term of two years should be changed to that of one year—a proposition which was carried by my casting vote.

Section 99.—Landlord's right to measure land.

57. With regard to the landlord's right to measure land, provided for in section 99, and the enquiry made in paragraph 21 of your letter as to whether the power should be extended to *all* lands, lakhiraj included, and whether the measurement should extend to a survey of internal details or only of external boundaries, Mr. Nolan was of opinion that rent-free lands should be exempted, as the landlord could have no concern with them; but it seemed to us that the landlord has a distinct concern in the measurement of rent-free lands, in order to ascertain whether the amount of land actually held rent-free corresponds with the amount for which the sunnud has been granted. We further resolved that external details, provided that they included the boundaries of detached plots, would be quite sufficient, and that internal details should not be allowed.

With regard to the limitation of the number of times measurement should be allowed, we thought it necessary to call attention to the case of bhaoli lands, in which annual measurement is not only customary, but also necessary, and to recommend that an exception should be inserted to meet the cases in which rent is payable in kind, and annual measurement is necessary in order to ascertain such rent. Mr Price was inclined to think the insertion unnecessary, as such cases seemed to be provided for in clause 2 (*b*) of the section, which makes an exception of cases where the area under cultivation is liable to vary from year to year, and the rent payable depends on the area of cultivation. This clause does not seem to me to meet fully the conditions of a "bhaoli" holding.

Section 101.—Standard of measurement.

58. In connection with section 101 and paragraph 21 of your letter, enquiring (2) whether the measurement should be made according to the officially determined local pole, conversion into the English measure being subsequently had, or whether the process should be reversed, we were unanimous in thinking that measurement should first be made according to the local standard, with which the ryots are acquainted. The latter would be certain to regard with suspicion and discontent measurement in a standard unknown to them, and any number of subsequent conversions to local standards would fail to dissipate their misgivings. Mr Norman thought that a bigha of 14,400 square feet was not a very suitable land measure for Behar and Orissa, the local bigha in Behar being very various, and the settlement bigha in Orissa being equivalent to one acre; and he recommended the universal adoption of the English acre.

Sections 102-109.—Managers.

59. We were strongly of opinion that sections 102-109 inclusive were an invasion of private rights, and that they should be expunged from the Bill. Mr. Henry, however, wished to record his dissent, as he was in favour of rentaining the sections, but thought at the same time that the powers of a manager should be defined and restricted.

CHAPTER X.

Record of rights.

60. Mr. Price called attention to paragraph 19 of the Government of India's letter in which the point is raised as to whether the powers conferred or conferable on the revenue officers charged with the preparation of the record of rights are sufficient for the purpose in view, and said that he considered them manifestly inadequate as regarded the power of compelling attendance. The only penalty was one of imprisonment conferred by an old Regulation (VII of 1822), which he did not think officers would care to bring into use. He urged that special provisions should be made. But we think that the provisions contained in this chapter and in section 223 of the Bill, which makes the local Government competent to confer certain powers, together with those contained in the Code of Civil Procedure, are quite sufficient for the purpose.

Section 111.—Particulars to be recorded.

61. In answer to your enquiry in connection with section 111 we would suggest that "the instalments and rates of rent" should be inserted to complete the list.

Section 114.—Procedure in case of dispute as to entries in record.

62. We propose to omit from section 114 all after the words "under this Act," as we are of opinion that revenue officers should not follow civil but revenue procedure. The former is somewhat complicated and has not been used hitherto in other cases with which revenue officers have had to do

63. We would likewise recommend that sub-sections (5) and (6) of section 118 should be altered so as to make the proceedings under them correspond to ordinary revenue procedure.

Section 118.

64. Mr. Nolan and I are strongly of opinion that sections 117 to 120 inclusive should be omitted from the Bill. Why these sections have ever been introduced into the Bill does not seem clear, as the zemindars certainly did not want them, nor did the ryots. The majority of the conference, however, thought it unnecessary to expunge the sections, as they were merely permissive, and would arise in only very exceptional cases. It certainly seems to me that the only reason given in the Select Committee's report for adopting these provisions is not sufficient. The difficulty mentioned is an unfortunate consequence of the permanent settlement, which is no reason for throwing especially heavy extra duties on Government officers for the benefit of a new incoming zemindar. The cases must be very exceptional, and in such there is nothing against the Government taking executive action to assist a zemindar of any very large estate with the aid of especial officers.

65. We were of opinion that the provisions under section 115 were quite unnecessary and would entail great expense and an increased staff. It seemed to us that there was no reason why the Commissioner and the Board of Revenue—the ordinary tribunals of appeal from the orders of revenue officers—should not use their appellate power in such cases.

66. The words "should have regard to" in section 118 (4)* should, we suggest., be altered into "should be bound by," and the words "provided that he does not alter rents except to the extent and on the grounds sanctioned by this Act" should be added. The former seems to be really a clerical error.

*Section 118 (4).—For this purpose (*i.e.* settlement of rents) we shall presume that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the civil courts in settling rents.

CHAPTER XI.

67. In considering chapter XI in connection with the Government of India's enquiries in paragraph 22 of their letter, Mr. Nolan said that he thought that to fix rates in the abstract, leaving the civil courts to apply them to specific lands, seemed to be a very objectionable form of procedure. It would be a case of putting the cart before the horse. Mr. Boxwell and Mr. Price said that with respect to their districts, the provisions of this chapter would be simply unworkable, and the unanimous opinion was in the same direction.

Table of rates.

68. With regard to the Government of India's enquiry in paragraph 2, clause 1, as to whether it would be desirable to empower revenue officers to arrange for the cutting of irrigation channels, the distribution of water, and the payment of compensation, the opinion of the conference was in the negative.

69. In paragraph 19 of your letter we are advised to obtain the opinion of the indigo-planters of such a district as that of Sarun. The Collector of Sarun accordingly stated that the point was of no importance to the planters of his district, as all irrigation was from the distributaries from the Gunduk, the whole of which had been taken up by the Government and brought under the operation of Act III of 1876.

70. The question of *bastu* lands, called attention to in paragraph 12 of your letter, was next discussed, and information asked for. Mr Boxwell considered that provision should be made in the Bill that every ryot of a village should have a right of occupancy in his "bari" and "bari lands." This, he said, would simply strengthen the present position of the ryot in this respect, as his experience was that, although landlords are supposed to have the right to eject ryots from their "bari" and "bari lands," it was a right they really never used; at the same time it was a right which he thought they ought not to have the power to use. Mr. Vowell stated that he knew of no instance in which the right of occupancy in bastu lands could be acquired. The invariable practice seemed to be that the malik gave the materials or "amla," which were occasionally sold by the civil court, while the site always reverted to the malik. A rich ryot wishing to build a "pucca" house would have to take a pottah from the malik and pay rent. A poor ryot who has lost his jote would have to pay rent for his house either in cash or in "begari" like artizans and gowalas. Mr. Price's experience in Durbhunga and my own experience generally correspond with Mr. Vowell's. Mr. Nolan said that the custom in Shahabad was that homestead lands were held rent-free. As the ryot got no income from them he could pay no rent. At the same time he thought it might be well to make some provision to save this custom, which he believed to be widespread. Mr. Norman, Mr. Vowell, and I expressed our disapprobation of the proposal, on the ground that it was both unnecessary and dangerous. None of us knew of any cases of the enhancement of the rent of *bastu* lands; and I pointed out that the proposal would have the effect of making the zemindars at once put a rental on every single house in their villages. To my knowledge a threat of this very nature was made in the Durbhunga Raj, and that alone was most effective. Besides this the right of occupancy being granted, the "bari" would become liable to be sold up along with the ryot's other occupancy holding; and whereas now a ryot, when sold out of his cultivation, retains his house, he would be turned out of the village as well as his field. However applicable the proposal might be for Bengal, it seems to me a dangerous one to apply in Behar. The proposal by Mr. Boxwell was, however, supported by the remaining five members, and carried, Mr. Henry desiring to extend it by omitting the word "settled," which he said would make it of little

use in Chumparun. He proposed that to meet the existing state of things in his district the proposal should be thus extended—

"The zemindar shall not be empowered to eject an '*asami*' from his homestead merely on the ground that he is not cultivating land in the village" The word "*asami*" he used designedly as it met the case of those persons who, though they live by cultivation, are not necessarily ryots under section 5 of the Bill. There are numerous cultivators whose names find no place in the jumabundi. From year to year they get possession of land as sub tenants and have to relinquish it at the end of the year. Should they at any time be unable to get this land, they would cease to be ryots under section 5, and the zemindar might. if he had the power of ejecting them from their homestead merely on the ground that they are not cultivating and, use this power as a means of compelling them to take from him any land he might wish to settle at a rack-rent.

CHAPTER XIII.

71. *Distraint.*—On the subject of distraint the feeling of the Conference was that the existing law on the subject was preferable to the new and cumbersome procedure suggested in the Bill The new procedure is open to many objections, the chief of them being the delay that would inevitably be caused There is besides the real difficulty to the raiyat in that under the new procedure, he has to deposit before he can get any remedy; while under the old procedure he could stop proceedings without having to make any deposit. It would appear, also, that the new procedure would afford greater likelihood of abuse, as the distrainer would, in the first instance, come armed with the powers of the Civil Court. Mr. Norman dissented from the general opinion on the ground that he had himself found the power abused in Orissa with the object of enhancing rents or of recovering legally irrecoverable arrears. He found that it was always had recourse to these in order to enforce disputed rents. This experience, it was pointed out, might be accounted for by the intervention in Orissa of the canungo, who takes very much the place of the Civil Court in the first instance, as proposed in the new Bill There is, therefore, we think, great foundation for the criticism that the delay caused by obtaining the aid of the Court before the first step to distrain could be taken would deprive the proposed procedure of its practical utility.

72. We all agreed with the Government of India in thinking that the landlord has *not* perfect security for his rent in the saleability of the occupancy right, and that the proposal to abolish distraint in the case of occupancy tenants was unwise. The process should apply to occupancy and non-occupancy ryots alike.

Section 141 (3)—Order by the Court *prohibiting removal* of the produce pending the execution of an order for distraining the same or rejection of the application.

We would at the same time recommend that, if the new procedure should be adopted, the words "regarding safe custody" should be substituted in section 141 (3) for the words "prohibiting removal" It is obvious that this alteration would help to prevent a serious abuse.

73. Mr. Nolan objected to section 159 He said that underlying the section was the supposition that rent-suits should be dealt with more summarily than other contested suits—a supposition equivalent to declaring that the procedure in the former cases might with advantage be cut short, and one against which he desired to enter his protest Rent-suits, when contested, usually involved very difficult, intricate, and technical questions, such as the accuracy of the jamabandi. The defence in very many rent-suits is that the jamabandi is false, and that there is a conspiracy to raise the defendant's rent. Such a question would require the utmost care in deciding. Mr. Henry and I expressed our decided objection to depriving the landlord of his summary procedure in rent-suits, and pointed out that sufficient safeguard was provided for in section 168(*b*), which makes full allowance for appeals. Instance upon instance could be cited of landlords being involved in a year's litigation for the recovery of a few rupees rent. We were of opinion that the discretion of the High Court and the local Government combined might with perfect safety be relied upon, and that no change in these provisions of the Bill was necessary.

Section 159 (1)—The High Court may from time to time, with the approval of the local Government, make rules declaring that any portion of the Civil Procedure Code shall not apply to suits between landlord and tenant as such, or to any specified classes of such suits, or shall apply to them subject to modifications.

74. We would suggest that, after the words "rent of a tenant" in section 168 (*b*), there should be added the words "or as to the rates at which rent is payable."

Section 168.—Appeals in rent-suits.

The object of this proposal is obvious.

CHAPTER XVII.

75. *Contract and custom.*—Under this chapter Mr. Nolan moved that nothing in this Act should render invalid a contract against sub letting. In this way sub-letting, which, it was agreed, could not be summarily put a stop to, might be in a great measure discouraged. This proposal was at once met by the objection that such an insertion in the Bill would have the effect of driving the indigo-planter to the universally condemned tiocadari system. The zemindar would refuse to grant any rayat a lease without this contract to bar his sub-letting, the planter's only refuge would be the tiocadari system, and an extra pressure would be put on the rayat. We decided against Mr. Nolan's proposal.

76. It was agreed by those members of the Conference who had any experience in the matter that the summary sale procedure should and could be applied to those dependent

taluks the revenue of which had been settled directly with Government, though the holders had been in the habit of paying it through the zemindar, who was held responsible for it.* Mr. Norman and Mr. Vowell had met with no such tenures in their districts; but Mr. Henry, Mr. Forbes, and Mr. Boxwell had, and were of opinion that the summary procedure was only fair to the interests of the zemindar, on whom its absence would act harshly.

Vide Government of India's letter, 2 (2).

77. In reply to your call † for information on the subject of *utbundi*, *halhasili*, or other such tenures, the Collector of Patna put in the following note:—

† *Vide* paragraph 33, Bengal letter.

An *utbandi* tenure is defined by Wilson as paying rent only for the amount of land actually cultivated each year, and a *halhasili* as a tenure of land yielding revenue varying with the crops grown on it. Section 214 saves the condition, whether customary or otherwise, of these tenures from the operation of the Act. It is now asked whether it is necessary to extend this saving to similar tenures under other names. It may be noted here that the term *utbandi* is not known in the Patna district.

A tenure very similar to the utbandi is the *hastbudi* tenure, the name of which is derived from *hast* (that which exists) and *bud* (that which did exist). In this the rate of rent is fixed at so much a bigha, but rent is charged only for so much area as is actually bearing crops at the time of harvest. *Halhasili* tenures exist in the Patna district, and are also called *bar shara fasl patta.* The cash rent is determined on the spot on inspection of the crops as they stand. A very similar tenure is known as the *balkat*, in which the rent is fixed by calculation on the field of the quantity of the produce and its price.

A peculiar tenure, adopted on bad and uncertain lands, such as *deara*, subject to inundation, is known as *jáidádi*, the principle of which is that the full rent agreed upon is paid on land in any year in which any crop whatever is grown upon it.

In all these tenures the principle of the *utbandi* and *halhasili* tenures obtains; that is to ay, the rent is a varying one, depending on the crop or the amount of land cultivated Section 214 ought therefore to be applied to them.

There is another tenure of which the rent (calculated in money) varies with the price of grain. It is called *mani bandobast* (from man, a maund).

78. In paragraph 2, clause 6 of the Government of India's letter it is asked whether it would be possible to specify, for the purpose of exemption from the pre-emption sections, any such transferable occupancy rights as those in *guzashta* or *gora* holdings. In reply, we would point out that guzashtadars, since they hold at fixed rates, are not liable to these pre-emption clauses.

79. With reference to the discussion in paragraph 8 of the Resolution of the Government of Bengal of the 21st October 1883,* the Conference entirely agreed with the views propounded by the Government of Bengal.

* On the subject of the distribution of the incidents of the cost of agricultural improvements between landlord and tenant.

APPENDIX A.

Remarks on Price Lists by the Collectors of Chumparun, Mozufferpore, and Durbhunga.

Section 52.—Mr. Norman's Remarks on Price-Lists.

Sub-divisional price-lists are not the averages for local markets, nor are district price-lists the averages of sub-divisional lists. The only information available in this district for past years is the district and sub-divisional price lists, which contain no averages, but state the prices of different descriptions of necessaries at certain police stations and outposts. The prices at some of the police stations have not been reported at all. The number of places for which returns are available is 15, and the number of years for which they are available is 10. The prices which prevailed at places other than those during past years cannot be ascertained. It is not possible to construct price-lists, nor to test the correction of such lists by comparison with the grain-dealers' books, because they are preserved by them for three years only.

Section 52.—Mr Price's Remarks on Price-Lists.

Prices current, being copies of those submitted to Government since 1875 (except the lists for 1875-76, also those for 1877-78, which are not forthcoming), are preserved in the head-quarter's office. These prices are not the averages, but the actual rates prevailing at the time when the lists were prepared. As a rule, grain-dealers in the sudder sub-division do not keep any record of prices current. The prices current at Durbhunga have been kept by bazar chowdhris for four years only, 1875 to 1878, and these agree with the returns submitted from Durbhunga for those years. Copies of the lists submitted from the sub-divisions of Tajpore and Madhubani have been kept since 1872, but no comparison can be made because grain-dealers profess to keep no corresponding returns. It has been ascertained beyond a doubt, after local enquiry, that this state of things prevails throughout the district, and no correct list of the prices of staple food-grains in the Durbhunga district for the last fifteen years can be prepared.

The food-crops that may be considered staples in the Durbhunga district are rice, marwa, and makai : wheat and barley are also grown, but in inconsiderable areas compared with those of the other food-crops.

Section 52.—Mr. Henry's Remarks on Price-Lists.

Price-current returns have been preserved with more or less completeness in both the sub-divisional and district offices in Chumparun, but there exists no means of verifying them from the books of the grain-dealers. The prices shewn in our published returns represent retail selling prices, and from such enquiries as I have been able to carry through, it would appear that retail grain-dealers do not keep any records of their transactions of past years. Some of the larger dealers have records showing the wholesale prices at particular periods, but no direct or obvious relation seems to exist between these wholesale prices and retail prices at harvest times.

The Betteah Raj has given me returns for 15 years, and I have secured returns from several of the principal factories showing the prices of grain at harvest time. As regards the Raj, these returns represent the prices paid in the open market for the stocks of grain required by the Maharajah for private consumption, while, as regards the factory, the figures appear to have been derived (1) from the cost of grain actually purchased at harvest time for the year's requirements, and (2) from the prices at which the ryots commuted their rents on batai land.

These returns vary greatly and inexplicably, and each requires careful examination before the variations can be reconciled; but I have no doubt that these variations are capable of explanation. I am decidedly of opinion that the average price over a quinquennial period would not be a satisfactory guide, and suggest that the average should be struck for a longer period, say for 10 years.

Mr. Nolan's Remarks on Price-Lists.

Mr. D. J. Macpherson has furnished me with these observations.

The difference between the market prices at Arrah, and those at which cultivators sell food-grain in the interior of the district, is not now so great as it once was, and an examination of the fortnightly price-currents shows that the all-round price of food-grain at harvest

time at Bhubooah and Sasseram, far removed from the railway, is on the whole higher than at Arrah and Buxar on the line of rail. This is a somewhat remarkable fact: and as the matter is one of wide application, I think it important to discuss it at some length in a statistical report containing an estimate of the value of the gross produce to the cultivator. The following statement shows the average market prices at harvest time of the principal food-grains in the district of Shahabad for the 19 years, 1866—1884. The prices up to 1878 have been taken from a compilation prepared in the Bengal Secretariat in 1879, entitled "Prices of Food-grains, Firewood and Salt in Bengal for the years 1866 to 1878." Those for the last six years I have obtained by a personal examination of the authoritative fortnightly price-lists of Arrah, Buxar, Bhubooah and Sasseram. For rice, I take the average prices in January and February; for wheat, barley and gram, in April and May; and for maize, in September and October.

Prices in seers and chittacks per rupee of the principal Food-grains at harvest time in Shahabad District from 1866 - 1884.

Year.	Best rice.		Common rice.		Wheat		Barley.		Gram.		Maize.	
	S.	c.	S.	c.	S.	c.	S.	c.	S.	c.	S.	c.
1866	7	12	12	10	10	4	.....		.....		.....	
1867	8	12	18	2	17	8	.....		.....		.....	
1868	16	4	28	0	20	4	.....		.....		.....	
1869	10	8	17	6	15	12	.....		.....		.....	
1870	8	12	19	4	18	12	.....		.....		.....	
1871	14	8	23	0	24	12	.....		.....		.....	
1872	13	0	20	8	21	6	31	8	31	8	.....	
1873	12	0	19	8	16	0	25	8	28	0	17	12
1874	11	12	12	12	14	10	18	12	18	0	19	8
1875	14	2	17	4	18	8	29	0	29	0	32	0
1876	19	8	22	12	24	8	34	8	34	0	29	12
1877	17	14	19	12	20	12	30	8	30	12	20	0
1878	11	10	13	0	12	12	17	2	13	8	23	12
1879	12	6	18	13	13	11	19	1	15	8	18	2
1880	14	7	21	15	18	7	26	3	24	11	32	0
1881	14	8	21	14	22	0	37	8	34	1	34	10
1882	14	14	21	6	17	10	29	9	29	14	32	2
1883	12	6	18	11	18	8	28	9	28	3	27	2
1884	9	7	13	13	18	13	22	10	22	15	.....	
Average, excluding 1866	13	0	19	3	18	9	26	15	26	2	26	1

In striking the average, I exclude the year 1866, as otherwise, in the case of rice, the series would both begin and end with a dear year; otherwise dear years are included as well as very cheap ones Unless this is done, a true idea will not be obtained of the value of produce which is calculated on the average yield of good and bad years taken together. High prices compensate for low outturns, and low prices for good outturns, and thus the value of the produce to the cultivator maintains a fairly uniform level. During the years 1867 to 1883, I find that, at the time cultivators usually sell their grain, prices were on the average cheaper than those for the whole year by 1¼ seer in the case of common rice, and one seer in the case of wheat. I have the yearly averages for barley, gram and maize only for the years 1872—78, and during that period prices at harvest time were cheaper than those for the year by 2 seers in the case of barley nearly 2½ seers in that of gram, but maize has on the average been selling at harvest time 3⅝ seers dearer than throughout the year as a whole. For practical purposes, therefore, it would appear that in the case of rice and wheat, prices at harvest time and throughout the year are pretty much the same, although considerable differences do occur in individual years. The following abstract which I have prepared from the fortnightly price-currents, will show how far market prices at harvest time varied at Arrah, Buxar, Bhabuah and Sasseram during the last six years. As before, I have taken January and February as the time when the ryots usually dispose of their winter rice, April and May when they sell their rubbi grain, and September and October when they sell maize. The statement also shows the percentage of variation at each place from the district average. As the price is expressed in number of seers and chittacks per rupee, the prefix + in the percentage columns denotes greater cheapness and greater dearness. The price-lists do not give the price of maize in every case.

Market prices at harvest time from 1879 *to* 1884.

Crop.	Year.	Number of seers per rupee at— Arrah.	Buxar.	Bhabuah.	Sasseram.	Average for district.	Percentage of variation from distinct average at— Arrah.	Buxar.	Bhabuah.	Sasseram.
		S. c.	S. c.	S. c.	S. c.	S. c.	S. c.	S. c.	S. c.	S. c.
Best rice	1879	15 8	12 8	11 0	10 8	12 6	+ 25	+ 1	— 11	— 15
	1880	22 4	14 2	11 0	10 8	14 7	+ 54	— 3	— 24	— 27
	1881	22 4	14 6	11 0	10 8	14 8	+ 53	— 1	— 24	— 28
	1882	21 0	15 0	11 12	11 13	14 14	+ 41	+ 1	— 21	— 21
	1883	11 10	14 0	12 0	12 0	12 6	— 6	+ 12	— 3	— 3
	1884	9 1	9 0	10 0	9 12	9 7	— 4	— 5	+ 6	+ 3
	Average ...	16 15	13 1	11 2	10 13	13 0	+ 30	+ 1	— 14	— 17
Common rice	1879	17 8	17 0	22 0	18 12	18 13	— 7	— 10	+ 17	.....
	1880	24 8	23 6	18 8	21 8	21 15	+ 11	+ 6	— 16	— 1
	1881	24 12	25 4	18 0	21 8	21 14	+ 13	+ 6	— 17	— 2
	1882	23 11	24 10	18 4	18 14	21 6	+ 11	+ 15	— 14	— 12
	1883	18 12	21 0	17 0	18 0	18 11	+ 1	+ 12	— 9	— 4
	1884	13 10	15 12	12 8	13 6	13 13	— 1	+ 14	— 9	— 4
	Average ..	20 8	20 13	17 11	18 11	19 6	+ 6	+ 7	— 9	— 4
Wheat ...	1879 ...	12 8	13 4	14 8	14 8	13 11	— 9	— 3	+ 6	+ 6
	1880	18 10	16 6	19 2	20 0	18 7	+ 1	— 13	+ 4	+ 8
	1881	21 12	19 6	22 12	24 4	22 0	— 1	— 12	+ 3	+ 10
	1882	16 10	16 4	18 12	19 0	17 10	— 6	— 8	+ 6	+ 8
	1883	17 6	16 11	18 14	21 2	15 8	— 7	— 9	+ 2	+ 14
	1884	18 10	18 2	18 4	20 5	18 13	— 1	— 3	— 3	+ 7
	Average ...	17 9	16 10	18 11	19 13	18 3	— 3	— 9	+ 3	+ 9
Barley	1879	19 6	18 8	19 10	19 4	19 1	— 1	— 2	— 2	+ 1
	1880	27 2	25 8	29 12	32 8	28 0	+ 3	— 2	+ 13	— 14
	1881	38 4	35 12	36 0	40 0	37 0	+ 1	— 3	— 2	+ 3
	1882	33 4	26 10	30 0	28 8	29 0	+ 12	— 10	+ 2	— 4
	1883	26 6	27 0	30 1	30 12	28 0	— 8	— 5	+ 5	+ 8
	1884	23 4	23 8	21 8	23 4	22 0	— 2	+ 4	— 5	+ 3
	Average ...	27 11	26 2	27 13	27 6	27 4	+ 2	— 4	+ 2	Nil.
Gram	1879	15 13	14 0	16 5	16 0	15 8	+ 1	— 5	+ 3	+ 1
	1880	24 0	24 0	23 12	27 0	24 11	— 3	— 3	— 3	+ 9
	1881	36 12	33 0	31 12	34 4	34 1	+ 8	— 2	— 7	+ 1
	1882	32 0	31 2	29 0	27 8	29 14	+ 7	+ 4	— 3	— 8
	1883	27 14	28 12	29 10	26 8	28 3	— 1	+ 2	+ 5	— 6
	1884	24 0	24 12	21 8	21 6	22 15	+ 5	+ 8	— 6	— 7
	Average ...	26 11	26 0	25 5	25 7	25 14	+ 3	+ 1	— 2	— 2
Maize	1879	.....	18 2	.....	.....	1 2	...	.....	.....	.....
	1880	33 8	30 8	.....	.....	32 0	+ 5	— 5	.....	.....
	1881	36 10	32 4	.....	35 0	34 10	+ 6	— 7	.....	+ 1
	1882	33 0	34 0	.....	29 6	32 2	+ 3	+ 6	.....	— 9
	1883	26 4	26 4	.....	28 0	27 2		— 3	..	+ 3
	Average for 1881-82 ...	34 13	33 2	.....	32 3	33 6	+ 4	— 1	.....	— 3

Taking the Arrah prices as a standard, those at Buxar, Bhabuah and Sasseram varied from them on the average according to the following percentages :—

Crop.	Average price at Arrah.	Percentage of variation from Arrah price at— Buxar.	Bhabuah.	Sasseram.
	S. c.			
Best rice	16 15	—20	—35	—17
Common rice	20 8	+ 1	—11	— 7
Wheat	17 9	— 2	+ 6	+12
Barley	27 11	— 2	Nil	— ¼
Gram	26 11	— 1	— 4	— 4
Maize	34 13	— 4	.....	— 7

It thus appears that prices of all the principal food-grains, except wheat, are lower at Arrah than at the sub-divisional head-quarters. Prices are on the whole highest at Bhabuah, and next to Bhabuah at Sasseram As regards *best rice*, the prices are so very much lower at Arrah than elsewhere, that I suspect they do not refer exactly to the same article. In the case of *common rice*, the price-lists do not distinguish between *early rice* and *winter rice*; the former sells much cheaper than the latter, but after January the prices given are probably those of winter rice only. I have not given the prices of *millets*, because they are quoted very irregularly in the price-list, and when prices are quoted, it not unfrequently happens that some such term as "peas" or "khesari" is entered alongside the figures, showing

The following remarks show that the fortnightly price-lists are somewhat unreliable.

that the prices given are not those of millets at all. The cheapness of rice and dearness of wheat at Arrah and Buxar, as compared with Bhabuah and Sasseram, depend no doubt on the circumstances that near the railway articles which are imported are cheaper, and those which are exported dearer than at a distance from it. On the whole, I think it may be assumed that the average prices at Arrah of wheat are not dearer than those at which grain can be bought in the principal markets throughout the district. There may of course be exceptions, but my object here is to get at a general rate to work upon.

It will now be apparent why it is that, according to the information I have received, prices at Arrah are not very much higher than those at which cultivators can sell their grain towards the south of the district What I have been told is that when it is selling at Arrah 28 seers for the rupee, the ryot can usually dispose of it 30½ seers, a difference of only 9 per cent. Supposing that rice bought from the ryot at that rate 25 miles south of Arrah, is sold at Sasseram, 35 miles off, the percentage obtained for profit and cost of carriage will be 16½. Similarly, rice bought at the above rate 20 miles south of Buxar and sold at Bhabuah, 40 miles off, will give an allowance of 21 per cent for cost of carriage and trade profits. It is not, however, an easy matter to ascertain what would be an average percentage to allow between the retail market prices at sub-divisional head-quarters, and the prices at which cultivators part with their grain. We may assume that the prices obtained by the cultivators are reflected in those prevailing at the sub-divisional head-quarters. I believe it is the general rule that retail dealers at head quarters buy direct from the travelling *beparis* who purchase at the ryots' doors. *Mahajans*, on the other hand, generally buy grain to export to a greater distance than the sub-divisional head-quarters, and, as a rule, employ their own men, also called *beparis*, to purchase for them from the ryots. Even if *beparis* reaping an independent profit ever slip in between the mahajan and the ryot, they must make a very small profit indeed, otherwise it is likely that the cultivator would prefer to transact business direct with the mahajan or his local representative. On the whole, therefore, we may assume that grain passes through the hands only of the persons who buy up from the ryot and the retail dealer before it is sold in the market. For these, a profit of three pucca seers of paddy or two seers of cleaned grain in the rupee would be ample, especially now that the facilities for the conveyance of grain from one part of the district to another have increased. There is now no difficulty in taking country produce about the district after the chief harvest of the year—the *aghani* and *rubbi*.

Opium is a crop which regulates prices on a wide area. It was Rs. 7-4 per seer in 1857-58, Rs. 5 in 1861-62, it was afterwards reduced to Rs. 4-8, and is now at Rs. 5 again. There has thus been no rise in its price for 23 years.

APPENDIX B.

Mr Nolan's proposal for the extension of the Bengal Drainage Act (VI of 1880) to Irrigation.

Mr. Nolan proposed that, to meet the case where irrigation works were required of a permanent nature, or at times other than those of emergent necessity contemplated in Mr. Henry's resolution, on the subject of improvements under Chapter IX of the Bill, Government should be empowered, as under the Bengal Drainage Act, to appoint Commissioners, who would take the votes of landholders affected by projects of irrigation, and, on the representatives of the greater part of the area to be improved consenting, to approve the plans, which would then be carried out either by Government or private agency, the cost being advanced by Government at 6 per cent. interest, and recovered from those benefitted. It would seem that this subject should be dealt with by a seperate Act, and this proposal is therefore added as an appendix to the report. For the areas irrigated by Government canals, Mr. Nolan was of opinion that Act III of 1876 would meet all requirements. Mr. Nolan had consulted Messrs Burrows, Mylne and Thomson, and the Superintending Engineer on the subject, and their remarks are annexed.

No. 3870, dated Arrah, the 21st July 1884.

From—The Superintending Engineer, Sone Circle,
To—The Collector of Shahabad.

I HAVE the honour to acknowledge the receipt of your letter No. 1045G of the 16th instant, requesting my opinion as to "whether, with reference specially to landlords' improvements, it is desirable to empower revenue officers to arrange for—

(1). The cutting of irrigation channels.
(2). The distribution of water.
(3). The payment of compensation, and if so, what form such provision should take."

2. As regards the first, the difficulties experienced during the early days of irrigation in this circle are gradually disappearing, and the cutting of village channels does not hold the important place it once did in the consideration of how to carry on irrigation in the district; but in 1877, when the subject of enforcing a compulsory cess on all lands irrigable from the Sone canals was under discussion, the question of how to carry the water to the fields was one of vital importance. You have probably a draft of the Bill in your office. Unfortunately my copy has been mislaid, but it was settled at one meeting that the Government should provide the means for carrying the water to within a mile of every field in the irrigable area, the channels for conveying the water further being constructed by the people interested. I rather think the whole duty of constructing village channels was thrown on Government in the amended draft of the Bill, but the result would have been nearly the same as that arrived at in the meeting mentioned above, it being quite impossible for Government to undertake the distribution from field to field; the responsibility of Government would have ended when the means of conveying the water to the boundary of a village was provided. This burden to be thrown on Government was necessary, as the Government of India desired to impose the compulsory cess without any delay, and this cess could hardly be collected from the villages altogether cut off from the canals. Fortunately the necessity for undertaking this work by Government, together with that of the still more laborious and difficult duty of maintaining this net-work of small channels, was never experienced, the Bill having been dropped. If the idea of making the owners and occupiers, &c., of large tracts of country or properties pay for special work constructed for their benefit should arise again, it would certainly be an advantage to find some clause in the *Land Bill now under* consideration, which recorded the duty of the landlord to share in the expense of the distribution of the water. The landlord would probably pay in Behar half the cost if the channels were made compulsorily under the order of the Collector. This would of course be decided upon after special enquiry, and form the subject, if necessary, of special legislation.

3. The distribution of water is so intimately mixed up with the provision of channels for its passage from the main canals to the fields that it seems hardly possible to separate the two. In the North-West and Punjab the distribution of the water presents very slight difficulties, but in South Behar our difficulties by no means end when the water arrives at the fields They are caused partly by the feebleness of the village organisation, and the indifference of the putwari. As Sir Steuart Bayley, (then Mr. Bayley), Commissioner of the Patna Division, in his letter No. 104R of the 26th January 1875 to Government, recorded—"It is also under the consideration of Government to bring them (the putwaries) more closely under the Collector's supervision than they are at present." It is supposed now the opportunity has arisen of re-considering the question that these men will hereafter hold a position more akin to that of the putwaries in the North-West and Punjab than they do at present.

The condition of affairs under which it is impossible to ascertain the name of an occupier of land in a village will, it is hoped, shortly disappear.

4. The subject of imposing an owners' rate in these districts has been under discussion. It is imposed in the North-West and Punjab, and is specially provided for in Part II, sections

37 to 44 of the Northern India Canal and Drainage Act of 1873. On the discussion which preceded the drafting of the Bengal Irrigation Act, the Commissioner of Patna, in paragraphs 12, 13, and 14 of his letter No. 85R of the 13th December 1874, to Government, expressed his opinion that "clearly if ever there is a case for the owners' rate it is in those districts where the bhaoli system exists, and the only question in my mind is whether it is wiser to abstain from introducing anything of the kind at the outset, in order to secure the zemindar's good will and the extension of the benefits of irrigation." This has been settled, as in all cases, where lands are held on the bhaoli system, the landlord is equally assessed with the cultivator. Whether the collection presents any difficulties you will be better able to decide than I can. Beyond this I doubt whether it would be wise to press any claims against the landlords.

5. Under the third head, the payment of compensation, I conclude that it is desired to consider whether the tenant shall receive any return for sums expended in improving his lands; and this would resolve itself, as far as the present enquiry is concerned, into the question of whether the cultivator, having given either money or labour towards providing the means of bringing canal water to his fields, shall receive compensation if he throws up his cultivation, or is removed by order of his landlord. I think the case would be met as in the somewhat similar cases of the construction of a masonry well, or the making of an *ahara*, which have doubtless been considered by the entry of some general clause in the Rent Bill, recognising rights on the part of the tenant to compensation for permanent improvements.

No 4318, dated the 31st July 1884.

From—Messrs. Burrows, Thomson and Mylne,
To—The Collector of Shahabad.

Your No. 1045G, dated 16th instant.

In reply to the query in your letter, we beg to state that we consider it will be advisable to empower revenue officers to arrange for the cutting of irrigation channels, the distribution of water, and the payment of compensation where there are no Government canals, providing it is first ascertained that the landlord or landlords will not come forward, and that no local combination can be formed to find the funds for the purpose. But in view of the modification which (in the light of after experience) may perhaps be found desirable in such an Act, we are of opinion that it would be better not to embody it in the Tenancy Bill, considering the disturbance its revision might cause that measure, and with regard also to the more detailed and adequate treatment it would receive if dealt with separately.

Where there are Government canals, and local enterprise or combination is not forthcoming to make the necessary channels, the Canal Act could be amended so as to enable canal officers to do what is necessary.

The form this should take might be the same in both cases (that is, where there are no Government canals and where they do exist), and we think that the best plan would be for Government to supply the capital needed for the undertaking, and charge on the irrigable area a sufficient rate per acre to cover interest and cost of management, distribution, and maintenance, leaving it open to the landlord, or landlords, or ryots to purchase out-and-out the whole arrangement for a certain sum, which could be ascertained when the work is done. We write with special reference to the Bhabuah sub-division, which is a typical case, as in that quarter there are few, if any, large estates, and the villages are in the hands of numerous shareholders, many of whom are also cultivators.

APPENDIX C.

Mr. Forbes' proposal with regard to the restrictions placed on sub-letting in cases in which indigo-planters are concerned, together with the objections and remarks made by the other Collectors of the division, and Mr Forbes' reply on certain points..

I would advocate several alterations in the Bill in the interests of the indigo-planters, as well as of the ryots themselves. What we wish is to bring the planter and the ryot together to allow them to treat directly with each other without the intervention of the zemindar. The ryot will then be able to make his own terms with the planter, and these will invariably be much more favourable, if the two parties are left to arrange matters between themselves, than he is likely to get from any one else The indigo interests cannot be ignored. The outlay of the factories in Sarun brings as much, or very nearly as much, money into the district as the immense disbursements made by the Government to the opium cultivators, and in other districts the amount expended by indigo factories is probably even more than this. But unless we give the planters some means of making fair and equitable arrangements with the ryots, we shall force their hand and drive them to seek the aid of the zemindar. We shall oblige them to maintain the *ticcadari* system at all costs—a system which is at the root of nine-tenths of the abuses complained of by zemindars, ryots, and planters alike.

My proposals are these :—*First*, that in section 38 the term beyond which an occupancy ryot may not sub-let a part of his holding should be extended to 15 years; provided that the total portion sub-let does not exceed one-half of his holding.

The intention of the Bill is, among other things, to make the occupancy right as valuable as possible to the ryot. He is given the right of out-and-out transfer, and there seems to me to be no good reason why he should not be given any lesser right so long as it is to his own interest to exercise it, and provided that it does not tend to the creation of a body of rack-rented under-tenants. Rack-renting, however, is to be feared in the case of short, and not of long leases, and I can see no greater danger in allowing the occupancy ryot to sub-let for 15 or 20 than for seven years. The object of the proviso, which I have added to my proposal is of course to prevent the occupancy ryot becoming a tenure-holder, and the planter or other sub-tenant thus acquiring a right of occupancy.

The indigo-planter can always pay the ryot a considerably higher rent than the ryot can himself pay to the landlord. This at least, whether such higher rent is given in the form of an advance payment under a zurpeshgi lease, or in the form of ordinary yearly rent, will of course be the basis of the arrangement between the occupancy ryot and the planter. Section 62 should therefore, I think, be specially modified in favour of sub-leases by ryots to indigo-planters; or if it is thought advisable to make the benefit to the letting ryot a more general one, all sub-leases by registered agreement for a term of, say, no less than seven years might be excepted from the operation of the section.

I should prefer the former of these alternatives, although the ryot (lessor) would no doubt prefer the latter. My proposal would not be making an invidious distinction in favour of indigo-planters, but the contrary. The object of the section is to prevent the multiplication of rack-rented under-tenants; but here we have a wealthy class of sub-tenants who choose to pay rack-rents and can afford to do so, and I cannot see what reason or right we have to separate the contracting parties.

In the third place, the indigo-planter's sub-lease will entirely lose its value if it is liable to be voided under section 183 on sale of the letting ryot's holding in execution for arrears of rent. The planter to save himself will be obliged to see that the ryots' rent is regularly paid to the superior landlord. The ryot will not be slow in discovering advantage of this and in acting upon his knowledge. He will regularly default and leave the planter to pay his rent, or ryots and landlord will continue in a plot against the planter. The ryots' holdings will be brought to sale and bought in by the ryots themselves, or restored to them by the landlord or other *benami* purchasers: the planter will be turned adrift, and the zurpeshgi he paid will be divided between the accomplices.

Some provision should be made to protect the indigo interests against these dangers. The planter is able and willing to deal fairly and liberally towards the persons from whom he holds his lands. All that he requires is protection against fraud, and this we are bound to give him. My suggestion is that a proviso should be added to section 183, either exempting all sub-leases for a term of, say, not less than seven years from the operation of this section, or specially exempting such leases to indigo-planters from its operation. The proviso can be strengthened by any further conditions that may appear necessary to protect the purchaser, such as that the rent to be paid to him by the under-tenant for the remainder of the lease shall not be less than a sum, say, 10 or 15 per cent. in excess of the rent he (the purchaser) is liable to pay to the superior landlord. It might, indeed, be urged that the rent payable to the purchaser should be that demandable by him from any under-ryot under section 62. This, from the planter or other under-tenant's view, would be better than nothing. But it would be distinctly unfair to him in cases where he had paid a zurpeshgi advance to the defaulting ryot. The latter, on the other hand, would have realized the full value of his holding from such advance, *plus* the sale proceeds, so that no injustice would be done to him by imposing the limit above suggested (viz. 10 or 15 per cent. in excess of the superior landlord's demand) on the rent demandable by the purchaser. As regards the purchaser, he would buy with full knowledge of the incumbrance (this being pro-

perly provided for in section 179, clause 6, which should be modified accordingly), and would regulate his bid accordingly. No hardship would therefore be done to him.

Mr. Norman's remarks on Mr. Forbes' proposal.

Mr. Norman is of opinion that Mr. Forbes' proposal seems to be based on the idea that we are bound to do something for the indigo-planters, and with that object to enable them to acquire land It would seem, however, to proceed on a misapprehension, namely that in order to produce indigo, the planter must get the land into his own possession. Such of course is not the case—witness the immense quantity of indigo grown by the ryot under sutta or indigo contracts

The proposal is open to the objection that it involves legislation in favour of a particular class (the indigo-planters), and is therefore invidious.

In order to protect the occupancy ryot from the consequences of his own improvidence, I have already proposed to curtail the maximum terms of under-leases granted by him from seven to two years. *A fortiori*, I am bound to deprecate any extension of the terms.

One of the effects of this proposal would be to place on a firm legal basis the existing system of *kurtaoli* leases, whereby the ryot hands over his holding to the planter and forfeits his independence—a result to be deplored.

In order to obtain a *kurtâoli* lease, the planter lends the ryot a considerable sum under the name of *peshgi*, and the ryots' right of re-entry is rendered conditional upon the repayment of this loan. Judging, therefore, from experience, the planters who desire to take advantage of this system now proposed would lend money to the ryot, and would retain the land until repaid. The system, therefore, virtually amounts to one for depriving the ryot of his land and handing him over to the money-lender.

We are endeavouring by the operation of this Bill to improve the status of the occupancy ryot, and to render him an independent agent, so that he will be placed in a favourable position for dealing with any person who desires to do business with him on fair commercial principles, and the planter on his side will have every facility for contracting with him for the production of indigo. Why anything further than this should be demanded in the interests of the planter I am unable to understand I certainly consider that it is no part of our duty to assist him in depriving the occupancy ryot of his land, which is what the proposal will really amount to.

Mr. Nolan's remarks on Mr. Forbes' proposal.

I entirely dissent from Mr. Forbes' proposal, which subverts the decision on certain points at which the Conference has after the fullest consideration arrived, and on which its recommendations are based.

The proposal may be put as an alternative, which amounts to this: Let us either increase the general power of sub-letting, or make special provision extending the power so as to facilitate sub-letting to indigo-planters. The former is exactly what we want to discourage, and would readily prevent for the best interests of the cultivating classes; and the latter is open to all the objections which are usually urged against class legislation, and need not be repeated here. I therefore wish to record my unqualified dissent.

Mr. Vowell's remarks on Mr. Forbes' proposal.

I quite acknowledge the force of the reasons urged by Mr. Forbes in support of his proposal. We have proposed restriction on sub letting to the cultivating class generally in order to prevent rack-renting, and Mr. Forbes suggests that an exception should be made in the case of those persons who are willing and can afford to be rack-rented. I would suggest a way out of the difficulty by proposing to amend section 62 by adding to it the words "unless on the application and registered agreement of the under-tenant." This could not be open to Mr. Nolan's objection to class legislation.

Mr. Price's remarks on Mr. Forbes' proposal.

I heartily concur with Mr. Forbes in thinking that the indigo industry in Behar cannot be ignored, and that it deserves every legitimate support; but I would deprecate any special legislation in its behalf. I think that the protection afforded under the provision of the Bill are sufficiently ample to meet all requirements, and I know that the Durbhunga indigo-planters have never claimed the necessity of having special provisions to meet their case. The restriction of the term of sub-lease should hold good throughout. An indigo-planter will, I think, rarely require a longer lease; and if he should, I presume that there is nothing to prevent its renewal.

Mr. Boxwell's remarks on Mr. Forbes' proposal.

I quite agree with Mr. Forbes in thinking that we ought to aim at bringing the planter and the ryot together without the intervention of the zemindar, and that the interests of the former cannot be ignored by us, and I coincide with him in seeing no objection to special legislation about a special class, so long as it injures the interests of no other class. Indigo-planters are exactly the commercial tenants who can protect themselves from the

peculiar evils of Indian or Irish tenancy, and who should therefore be left to clear their commercial position and look after themselves. By so doing we should strengthen the hands of Government. I would suggest that the indigo-planters' under-ryot should be allowed not only to pay his ryot lessors' unpaid rent, but also deduct all such payments from the rent payable to him. The two main objects are the security of the actual cultivator against certain specified evils, and the security of the zemindar for the payment of a fair and equitable rent, and I wish to encourage all freedom of action not inconsistent with these objects. I would not allow a ryot to recover a profit rent in Court, but I see no objection to the planters paying a salami for a sub lease, and I would in this way defeat the conspiracy indicated by Mr. Forbes.

Mr. Henry's remarks on Mr. Forbes' proposal.

Mr. Henry is opposed to recognizing in the Bill a longer period than seven years for sub-leases. In the case of indigo-planters no practical difficulty, and certainly no hardship, will be entailed by adhering to this period, for the planter can always secure a renewal. It seems to him that chapter XV contains provisions which deal with the evidence of sub-leases when the holdings are put up to sale.

Under the definition a sub-tenancy is an encumbrance, which becomes a registered encumbrance, if registered under the provision of the Indian Registration Act three months before the accrual of the arrears.

Section 180 provides that tenures shall be sold subject to encumbrances.

Section 185, which gives the Local Government power to direct that occupancy holdings shall be dealt with as tenures for the purposes of the section on encumbrances, &c, read with sections 180 and 206, seems to him to meet the case which Mr. Forbes wishes to deal with specially.

In districts where indigo-planters are compelled to take sub-leases from occupancy ryots, the Local Governments would, on the application of the Collectors, and on good grounds shown, declare that, for the purposes of the encumbrance section of the Bill, occupancy holdings should be assimilated with tenures. In those cases in which the sub lease was voided the planter would still have redress under section 206.

To make any rule of general application to the effect that encumbrances, or the special encumbrance of a sub-lease, shall not be voidable at a sale of the holding for arrears of rent, would act injuriously against the landlords; for whenever a ryot knew that his holding was about to be sold up for arrears of rent, he would at once create a sub-tenancy, receiving in return a sum of money by way of consideration His holding, being subject to this encumbrance, would not command a good selling price, and the landlord's security for his rent would be weakened *protanto*. A real safeguard against fraud of this description has been provided in the Bill, which declares that an encumbrance shall not be considered a registered encumbrance unless it has been registered three months before the accrual of the arrear Mr Henry thinks that any special provisions of the nature advocated by Mr. Forbes are not necessary, as the draft Bill contains provision which could be rendered applicable.

Note by Mr. Halliday.

I fully concur in Mr. Forbes' proposal with regard to the restrictions placed on sub-letting in cases in which indigo-planters are concerned, and I think his arguments would have been less open to opposition if he had taken a broader ground and had maintained that the power of ryots to give long leases was required both in their own interest and in the interests of *all* industries which demand heavy outlays of money and block, &c, at the outset, and some guarantee that they shall not be liable to interruption or ruin at short recurring intervals of time. Among such industries may possibly be included, within a few years, the manufactures of tobacco and flax on a large scale. It is better that the ryot should be able to deal directly and freely with an outside capitalist to their mutual advantage than that the latter should continue to purchase the zemindar's territorial influence, to the injury more or less of the ryot. The contention as to class legislation against Mr. Forbes' proposal is not altogether a fair one. If the proposal had been intended to form the subject of a special Bill, there might have been reason in the objection; but in the large comprehensive measure before us, the interests of proprietors, land-holders, planters, money-lenders, tenure holders, and all classes of tenants must be considered.

Mr. Forbes' reply to certain objections.

With reference to the argument that section 185 meets the difficulty I have pointed out in regard to the application of section 183 in the case of sub-leases by occupancy ryots to indigo-planters, I would beg to be allowed to add a few remarks It seems to me that section 185 is insufficient, inasmuch as it provides no protection the interests of the superior landlord, for unless there is some provisions enabling the purchaser of the occupancy-holding to collect a fair and reasonable rent from the sub-lessee of any portion of the holding, he will not be in a position to satisfy the landlord's demand. This, no doubt, will be brought forward, in any case where the Local Government may propose to take action under section 185, as an objection to its doing so. It does not either seem altogethe reasonable that the whole onus of taking action should be thrown upon the Local Government. The zemindars are everywhere in Behar doing their best to force the planters

to take their villages in ticca, and to prevent their having direct dealings with the ryots. Instances are very common of zemindars inserting a clause in the ryots' pottah stipulating that he shall not grow indigo or sub-let to an indigo-planter, the object being to compel the planter to take a lease of the village from the zemindar at, probably, an exorbitant rent. I fear, for these reasons, that when the Local Government begins to take action under section 185, it will meet with much opposition from the landlord class, and no doubt one argument will be that such action is against the spirit of the law as contained in section 183. The ticcadari system, in connection with indigo, is a recognised evil. The only way of meeting it is to facilitate direct dealings betwheen the planter and the ryot, and I do not see why the subject should not be openl dealt with in the Bill and disposed of once for all.

W. J.—Reg No 5258C—344—14-8 84.

No. 70R, dated Bankipore, the 3rd September 1884.

From—F. M. HALLIDAY, ESQ., Commissioner of the Patna Division,

To—The Secretary to the Government of Bengal, Revenue Department.

IN continuation of my letter No. 47R, dated 6th ultimo, I have the honour to submit copy of a letter No. 818G, dated 30th idem, from Mr. Forbes, the Collector of Sarun, containing some further remarks regarding his proposal with regard to the restrictions placed on sub-letting in cases in which indigo-planters are concerned, and in doing so beg to say that I agree in the views expressed by Mr. Forbes.

No. 818G, dated Chuprah, the 30th August 1884.

From—A. FORBES, Esq., Offg. Collector of Sarun,

To—The Commissioner of the Patna Division.

I HAVE the honour to state that until I received with your No. 102R, dated 19th instant, a copy of the report of the Rent Bill Conference held last month at Bankipore, I was not aware that Mr. Norman's remarks in connection with *kurtaoli* leases (on page 26 of the report) had been left upon the record.

2. As, however, I now find this is the case, I think it right to point out, as I endeavoured to do verbally, the mistaken view held by Mr. Norman of the object and effect of my proposals. Mr. Norman says that by the *kurtaoli* system "the ryot hands over his holding to the planter and forfeits his independence," and he seems to think that my proposals will have the effect of legalizing this system.

3. In discussing this subject it is necessary first to clearly understand what the *kurtaoli* system is, and what gave rise to it. A *kurtaoli* lease is a sub-lease by the ryot of his whole holding to the indigo-planter with the condition that the planter is to retain a certain specified portion of the land for indigo, and that he is to re-sublet the rest to the ryot lessor. This carious arrangement is not solely an invention of the evil one. In nine cases out of ten it is a defensive alliance between the planter and the ryot against the interference and exactions of the zemindars. The planter assumes the whole of the ryot's responsibility in regard to the payment of the rent of the holding, and effectually protects him from harassment and illegal enhancements, and I think that I am correct in saying that it is, where bad landlords are found, and only there, that the *kurtaoli* system will be met with. The ryot at the same time is safe, under the terms of the lease, in the possession of his other lands (viz. those which the planter does not require for indigo): he knows, too, that the planter is not an exacting landlord, as it is not his interest to be so. He (the planter) makes his money by his indigo, and is even ready to put up with a moderate loss in the matter of rent in order to keep the ryots' "razi," and to avoid agitation. These considerations then are the ryot's reasons quite as much as the advance of cash on easy or no interest for entering upon the *kurtaoli* arrangement with the planter. The planter on the other hand is safe from being suddenly ousted and having his indigo crops distrained and sold in a rent suit by the zemindar against the ryot. This is all the security he asks for, and this is what I wish and what I think we are bound to give him.

4. I have said above that under the *kurtaoli* system the ryot is safe in the possession of the portion of his holding in which he does not agree to allow indigo to be grown. I think it very possible, however, that in practice the ryot has to submit to the planter *changing* his indigo from one field to another. I am not aware whether this is or is not a common incident under the *kurtaoli* system, but it certainly seems to me to be a possible one, owing to the peculiar nature of the arrangement by which the planter takes a sub-lease of the whole, and not merely of a specific field or two, of the ryot's holding. I know that under the ticcadari system, when I was a sub-divisional officer in Tirhoot, this changing of lands used to be a common practice, and one which was most unfair and distasteful to the ryots, and if the practice exists also under the *kurtaoli* system, I can quite understand Mr. Norman's objection to its continuance.

5. But what I wish to be clearly understood is that my proposals are directed against the evils of the *kurtaoli* as of the *ticcadari* system, and that their effect will not be, as Mr. Norman seems to think, to stereotype those evils. What I wish is to allow the ryots and planter to treat directly with each other in respect of the particular field in which the latter wishes to grow his indigo. I object as strongly as Mr. Norman does to the planter's obtaining any right in regard to the whole of the ryot's holding, which, as I have endeavoured to explain, is the essence of the *kurtaoli* lease. My proposals are directed against the impediments to free trade which have in Mr. Norman's district rendered recourse to such a device necessary, and the very existence of such a device shews, in my opinion, the need of our legalizing fair and direct dealings between the contracting parties.

J. E. S.—Reg. No. 6750C—327—13-9-84.

No. J, dated Bankipore, the 2nd October 1884.

From—F. M. HALLIDAY, Esq., Commissioner of the Patna Division,

To—The Secretary to the Government of Bengal, Revenue Department.

AT the request of Mr. Nolan I have the honour to forward, in continuation of my No. 70R, dated 3rd September, the accompanying copy of his letter to my address (No. 1662G, dated 23rd September 1884), relating to Mr. Forbes' proposal to introduce provisions in the Bengal Tenancy Bill for legalizing under-letting to indigo-planters.

2. It will be seen Mr. Nolan considers that sufficient facilities are afforded for this by the Bill, as it stands. But he is prepared, supposing that indigo-planters attach value to the proposal made in their interests, and press the point, to concede the removal of restrictions on subletting for *bonâ fide* indigo cultivation.

I do not myself think that the indigo interest will press the point as regards the extension of the period of lease beyond seven years, whether the system under which planters will be able to obtain lands direct from ryots be upon the principle of payment of high rents or payment of low rents with high premiums. The planter must get his lands, and if he is enabled to deal directly with the ryots it will be immaterial to him in what form he makes the remuneration to the ryots for the land. Still it may happen that in cases (as I have mentioned in my note at the Conference) where the interests of industries demand heavy outlays of moneys and block, some guarantee is required that there shall not be interruption at short recurring intervals of time, and to meet this it seems to me that greater facilities should be available than are to be found in the hard-and-fast rule of the present provisions of the Bill. I can see no harm in giving, under special circumstances, free power to the ryots to deal with outside capitalists, as may seem best to their mutual advantages.

3. A good deal has been said about the "*kartouli*" lease, which seems to have arisen as a sort of bug-bear before the view of some of the gentlemen at our Conference, and it will be seen that Mr. Nolan in his present letter again attacks it. I am not sure that the *bonâ fide* system of "*kartouli*" has been really understood. Mr. Forbes in his letter, which I forwarded to you with my memorandum No. 70R above cited, has not, I find, quite accurately described the system. He states: "A *kartouli* lease is a sublease by the ryot of his *whole* holding to the indigo-planter with the condition that the planter is to retain a certain specified portion of the land for indigo, and that he is to re-sublet the rest to the ryot lessor," and he goes on to say that in nine cases out of ten it is a defensive alliance between the planter and the ryot against the interference and exactions of the zemindar. He also assumes that it is, where bad landlords are found, *and only there*, that the "*kartouli*" system will be met with.

Now, all this describes what I may call the innovated "*kartouli*" system. The system originated in the practice of a ryot subletting a *portion* of his holding to others to be cultivated on the terms of payment as rent either a portion of the crop grown, or a proportionate value thereof.

In the same way the *real* "*kartouli*" system, as applied to indigo, which may be found in Tirhoot, is the subletting by a ryot of a *portion* of his holding to the planter for a fixed period; the rest of the holding remains with the ryot. It is difficult to see how a ryot under such a sytem "forfeits his independence," as Mr. Norman believes. But it is easy to see that such system, instead of facilitating the *forced changing* of indigo from one field to another of the ryot, tends to a fair dealing between the planter and the ryot, and mutual accommodation where rotation of crop necessitates a change of soil.

That the innovated "*kartouli*" system exists, I am of course well aware of, and that it exists to a great extent in some districts is evident from the fact of its being thus misapprehended as the real system. I cannot, however, see in it, even as it so exists, the evils which are attributed to it as in itself involving the ryot in wholesale ruin and slavery. Of course where a ryot will insist on continued reckless wild extravagance for marriage and other ceremonies, no help can be given him by legislation. The reasons for the existence of "*kartouli*" leases in this form have been rightly described by Mr. Forbes in the necessity for a ryot to seek an alliance with the planter against the exactions of a zemindar.

Mr. Nolan thinks that the alliance is on such terms as to place the weaker party to it entirely at the mercy of the stronger. This is not altogether a right conclusion, inasmuch as the ryot though placing himself, say, at the mercy of the planter in some respects, enters into the arrangement to secure himself from being *entirely* at the mercy of a hard and exacting zemindar, and the advantages gained by the transaction are, as Mr. Forbes describes them, a gain by the ryot in freeing himself from a rapacious landlord's exactions, and the securing of an advance of cash on easy interest, or no interest at all.

4. In the concluding paragraph of his letter Mr. Nolan remarks on the objectionable character of the proposition for restrictions on subletting to be removed all over these provinces, merely for the sake of legalizing a local practice in an area of country which by comparison is insignificant. But provisions of such a nature can be enacted in such form as to apply only to special circumstances, and the removal of certain restrictions need not be made general.

No. 1662G, dated Arrah, the 23rd September 1884.

From—P. NOLAN, Esq., Officiating Collector of Shahabad,

To—The Commissioner of the Patna Division.

I PERCEIVE from your memorandum No. 70R, dated 3rd instant (addressed to Government), that Mr. Forbes' proposal to introduce provisions in the Bengal Tenancy Bill for legalising under-lettings to indigo-planters is receiving special attention, and I request permission to record a few observations on the subject, the report of what I said at the Conference not correctly expressing my view.

2. I quite agree with Mr. Forbes that it is desirable to permit planters to obtain from ryots with the least possible trouble land required for indigo cultivation. It appears to me that sufficient facilities are afforded for this by the Bill as it stands, the restrictions imposed by that measure on under-letting not being apparently of a nature to affect indigo-planters. The limit of the period of subleases to seven years is of little importance to them, as the same land cannot be cultivated with indigo for a longer period, while the provisions against excessive rents being realized through the courts is of no importance practically, as planters obtain land not by giving high rents, but considerable premiums: I should say that the planters would not attach any value to the proposal made in their supposed interests. If, however, it prove otherwise, and the planters press the point, I see no objection to the removal of restrictions on subletting for *bonâ fide* indigo cultivation, except the general objections to all class legislation, and it must give way to any economical necessity.

3. I also agree with Mr. Forbes and Mr. Norman in considering it undesirable that planters should, as under the *kartouli* system, take under-leases of land they do not require for indigo, merely to sublet them again to the original holders. It seems to me that the undertenant of an occupancy ryot should not be allowed himself to underlet. Mr. Forbes, while disapproving of the *kartouli* system, remarks that in nine cases out of ten it is a defensive alliance between the planters and ryot against the zemindar; he might have added that the alliance is on such terms as to place the weaker party to it entirely at the mercy of the stronger. I fear it resembles the fabled alliance of the man and the horse against the stag, and would have the same result.

Non equitem dorso, frenum non depulit ore.

4. What appears to me most objectionable is that restrictions on subletting should be removed all over these provinces merely for the sake of legalizing local practice affecting an area which by comparison with the country as a whole is insignificant.

J. E. S —Reg. No. 7457C—327—7-10-84.

BENGAL SECRETARY

No. 1836R, dated Bhagulpore, the 12th August 1884.

From—G. N. Barlow, Esq., C.S.I., Commissioner of the Bhagulpore Division and Sonthal Pergunnahs,

To—The Secretary to the Government of Bengal, Revenue Department.

I have the honour to submit the report upon the Bengal Tenancy Act called for in Government Circular No. 3T—R, dated 24th May last.

2. Should Mr. Porch submit any dissent hereafter, the same will be forwarded.

Report of Proceedings of a Conference upon the Bengal Tenancy Act held at Bhagulpore during August 1884.

CHAPTER II.

Bengal Government letter, paragraph 4 (Point *a*).

1. *Section* 5 (3).—This definition does not appear to include ryots holding under unregistered lakhirajdars. The matter is of importance, as in Bhagulpore district alone there are 7,481 unregistered revenue-free holdings. To remedy this, the words "or immediately under a holder of revenue-free lands, not coming under the definition of estates in section 3 (1) of chapter I" should be added after "tenure-holder."

CHAPTER II.

Bengal Government letter, paragraph 4 (Point *b*).

2. *Section* 5 (5).—Messrs. D'Oyly and Weekes would prefer to omit this clause. If it remains, they agree with the majority that the word "greater" be inserted before "part."

CHAPTER V.

Bengal Government letter, paragraph 4 (Point *c*).

3. *Section* 37.—The proposed arrangement of the "converted tenure-holder" will have no practical effect in checking sub-letting. The majority of us (Porch dissenting) think that it will actually encourage the system. The liability to summary sale will have no terrors for the sub-letting money-lenders or occupancy ryots, who will usually be able to pay up their rents without difficulty. As regards the working of the proposed system, very few cases will come to light for registration, and even after registration has been effected in solitary cases, there is no certainty that the zemindar will accept the position claimed by the sub-letting ryot as an occupancy ryot, and apply the summary sale powers. The object of the law may thus be entirely frustrated or, at least, that it will be fulfilled is quite uncertain. If the registration of occupancy holdings contemplated in paragraph 14 of Government Bengal letter, dated 7th September 1883, were completed, it would somewhat simplify matters; but we are a long way from this. We are unanimous that this section should be omitted.

Should it remain, the following suggestions are offered:—

The sub-letting ryot should be bound to serve a notice upon the zemindar as in cases under section 32, and under penalties similar to those prescribed in section 32 (5). If the zemindar is to avail of summary sale procedure, he should have notice of the sub-letting.

The zemindar should be allowed to apply for registration of a tenure (section 37). In cases where the occupancy right was acknowledged, it might appeal to the interest of the zemindar to bring the transaction to light.

It seems that the holding of a converted tenure-holder should be liable to pre-emption by the zemindar in the same way as an ordinary occupancy holding. Why weaken the force of the discouragement to sub-letting by giving exemption?

In principle there is no reason why the act of the occupancy ryot in sub-letting should bar the zemindar's right of pre-emption.

CHAPTER III.

Bengal Government letter, paragraph 5.

4. *Section* 8.—The necessity for this provision anywhere is doubtful, and in some cases it may work unjustly. Using the word in its present ordinary sense, tenure-holders are fully in a position to take care of themselves, and the law need hardly undertake their protection. It is reported from Maldah district that amongst the tenure-holders under the Act will be found persons who pay only 2 to 4 annas per bigha, while they sub-let at from 12 to 14 annas. The section has a tendency to work in favour of hard and rapacious landlords, and against those who have been lenient.

Section 9—Ought to meet any possible hardship, and the proposed limit should be removed. If this is done, the period of 10 years now set as a limitation to recurring enhancements under section 10 might be raised to 15 years as in section 50. It has been found impossible to give instances of enhancement of tenure-holder's rents which have already occurred in practice, or might be reasonably expected to occur. References to the civil courts have only brought forth one record of the kind, which throws no light upon the subject. The Behar districts of this division contain comparatively few tenures. There are mokararee tenures in all districts, a fair number of putnies in Purneah and a few in Bhagulpore. The ordinary way of leasing is on mustajiri or by farming. Such holdings will, under the definition in the Act, be "tenures;" but as they are temporary in character, and under written leases, they will not concern the provisions of the law. The District Officer of Maldah

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observes that there are a large number of tenure-holders there, but owing to the status and liabilities of these persons being somewhat uncertain and ill-defined, they have heretofore enjoyed in the majority of cases immunity from enhancement. It is further stated that the provisions of section XVII, Act VIII (B.C.) of 1869 (20 years' presumption) have been availed of with sufficient effect to virtually stop enhancements in these cases.

CHAPTER VIII.

Bengal Government letter, paragraph 6.

5. *Section* 64 (2).—There is much to be said on both sides of the presumption question.

Where estates have changed hands, the papers are often kept back by the former proprietor, and cases are mentioned in Bhagulpore district where actual assistance has been given to ryots to establish fixed rates against a successor. Even in cases where a zemindar has been in possession for generations, it is often difficult to prove variation in rates, owing to the absence of written engagements, which ryots will not usually go to the trouble of giving or accepting, and because the zemindari papers alone are not deemed by the courts sufficient evidence. In almost all cases for enhancement of rent the plea of the ryots is fixed rates. This occurs also in Maldah, where ryots frequently change their lands. On the other hand, the presumption rule is of old standing, and it has been the chief instrument of many tenure-holders and ryots securing a position which they could not possibly have otherwise obtained. We believe that in a very few cases in which the tenant wins upon the basis of uniform payments for 20 years is the fact true that the holding has existed from the time of the Permanent Settlement. In fewer cases still would the fact be capable of proof. In this view a certain demoralizing tendency is perceived in the operation of the law.

If the registration referred to in Government of India's letter, paragraph 7, can be carried out, this would undoubtedly supply the fairest settlement of the question. We, however, consider this to be impracticable. The majority of us (Barlow, D'Oyly, Weekes) are for enacting that the presumption shall not continue to run after the passing of the new Act.

CHAPTER V.

Bengal Government letter, paragraph 7.

6. *Section* 25.—The majority of us (Porch dissenting) are in favour of striking out the words "or estate" in this and the following sections. We believe that the acquisition of occupancy rights under the Act by a ryot in the village where he resides will meet the requirements of the case. The arrangement will be most in keeping with former customs, and will avoid difficulties and objections, and be understood by the people.

Section 27 (*b*).—A statement is annexed, marked Appendix A, which shows the number of partitions that have taken place in the several districts of this division in each decade since 1793-94. The year 1853 would answer very well for this division.

Sections 28 *and* 29.—Section 29 (1) seems required as a proviso for section 28, and section 29 (2) as an exception to section 29 (1).

CHAPTER V.

Bengal Government letter, paragraph 8.

7. *Section* 31 (*b*).—Enquiries made in Bhagulpore, both from zemindars and ryots, show that, according to present custom, ryots are not allowed to make any important improvement without consent of the zemindar.

The majority of us (D'Oyly dissenting) approve the proposed clause.

Clause (*d*).—For reasons to be given under section 77, ejectment under decree for non-payment of rent should be added here.

CHAPTER V.

8. *Section* 31, *Clauses* (*f*) *and* (*g*).—A statement, Appendix B, is furnished regarding occupancy transfers. Admitting that the figures show probably less than the true number, owing to the fact that mahajans often style themselves as cultivators in these transactions, the figures, except in the case of Monghyr district, do not show that any excessive proportion of holdings have been bought up by mahajans in past times. Nevertheless, we are impressed with a sense of danger that, with the increased value likely to be given to these holdings under the new law, a large number of them will pass into the hands of the money-lending class, and the evils of sub-letting by these and by the ordinary occupancy ryot will increase.

The transfer of jotes to mahajans that has followed the settlement in the Sonthal Pergunnahs has become a pressing question and furnishes a warning. Although Government has declared that results obtained amongst a half-civilized race affords no guide to what may be expected to occur elsewhere, the fact remains to be proved. Experienced non-officials express the strongest opinion upon the subject. The Chanchal Manager says that, if sales of holdings, otherwise than for their own arrears, are allowed, in a very few years the present occupancy ryot will have disappeared. This officer has lately caused enquiries to be made as to the indebtedness of the ryots in 15 of the most prosperous villages in the estate, taking two villages in each circle. The following results were ascertained. One thousand eight hundred and ninteen families, cultivating 30,249 bighas at a yearly rental of about Rs. 27,000, were found owing quarter of the year's rental, and five-eighths of the whole were in debt to the mahajan; some hopelessly so. Mr. Reily goes on to say that hitherto occupancy rights have not been transferable in this part of the country; but the moment these holdings are

made liable to sale, a large proportion will be sold up for old debts, or "what is much more common, the tenant will be induced to hand over his holding to the money-lender in part payment of his debt, on the promise that he will be allowed to retain possession of the land on the *adhi* system. The money-lender once let into possession soon finds means to dispossess the original holder bit by bit, and eventually the occupancy holder is reduced to the position of a serf or paid servant, who is given just sufficient to keep body and soul together, while the bulk of his earnings go towards paying off an ever increasing debt." Enquiries in Rokunpore (part of same estate), where the rental is less than two annas per bigha, showed that 132 tenants, whose names still stand in the zemindari papers as occupying their holdings, had made them over to the mahajan in part payment of their debts and had disappeared from the village, or were serving the money-lender in the capacity of a servant, or had sub-leased the holding from him on the *adhi* system. The mutation of names had been avoided by the money-lender continuing to pay the rent in the name of the original occupier.

As regards sub-letting, there is no difference of opinion between us that it should be checked in every possible way as an evil.

Treating the occupancy ryots as a body of cultivators, who, having been created and benefitted by the law, are in no way entitled to consideration when they seek to become middlemen and take to rack-renting, we would, as far as possible, impose stringent rules against the practice of sub-letting. We admit that it is impossible to absolutely stop sub-letting; but at the same time we think that the mention of sub-letting as one of the incidents of an occupancy holding is a mistake, and therefore clause (*g*) should be omitted. Elsewhere, the notice of sub-letting in the law should merely be the imposition of restrictions in cases where sub-letting takes place. The restriction which the majority (D'Oyly dissenting) would impose that in cases of sub-letting by ryots holding at fixed rates, or by occupancy ryots, the sub-lessee shall at once acquire a right of occupancy in the land sub-leased as against the lessor.

The proviso, section 37 (*a*), should be preserved in this connection to meet cases of hardship.

Even with the above restriction imposed, there is still so much uncertainty as to how far the operations of the law will be effectual in practice, that we think (Porch dissenting) the proposal for legalising general transfer of occupancy holding should be given up.

The custom of transfer may be widespread, but it certainly is not universal. There seems to be no necessity to force matters. When it is found that the provisions of the new law are securing their object, and the position of tenants has grown stronger, it will be easy to give the further right of free sale.

In accordance with these remarks, we think that clause (*f*) should be modified, and a transfer of an occupancy holding by sale only be allowed for its own arrears, and clause (*g*) should be struck out. Restrictions upon sub-letting to be separately imposed.

We have made the above proposals because we have not been able to devise any method by which the principles of maxima limits upon rent based upon a proportion of the produce can be practically worked. We are unanimously of opinion that, if such a method can be devised, it will afford the best solution of the difficulty. In such case clauses (*f*) and (*g*) may stand.

CHAPTER V.

Bengal Government letter, paragraph 9.

9. *Section* 43. *Grounds of enhancements* (*point a*).—We see no objection to the principle involved in these clauses.

Respecting clause (*a*). Whether it be owing to the fact that the zemindars find it difficult to prove their grounds, and fear that in their answer to the suit the ryots will establish fixed rates, or whether the view of the Munsif of Monghyr that rates are already so high and landlords so powerful that the ryots are unable to make and do not offer resistance to enhancements, is correct, or that of the Collector of Bhagulpore, who says that for every enhancement under suit a thousand cases occur out of court. However these things may be, the total number of enhancement cases in this division is exceedingly small. Still the majority of such cases as there have been are based upon the "prevailing rate." Out of 176 notices of enhancement in Bhagulpore district in 1882 and 1883, 111 were upon this ground.

Notwithstanding the results of special enquiries, disclosing that a prevailing rate existed in Jessore only, it is our belief that such can be generally discovered in this part of the country, if not extending over whole pergunnahs, at least limited to villages or groups of villages in the same or neighbouring estates. The ryots generally know those rates for their lands—complicated and often overloaded as they may be with illegal cesses—and are prepared to struggle forcibly and in combination for their maintenance. Cases of attempts to force up rents by the production of "collusive and fictitious rates" are not known to have occurred in these parts, nor do we think them likely to occur while things remain as they are.

Where a prevailing rate exists, the rule of enhancement proposed is fair and reasonable, and to deprive the zemindar of the right would be unjust. We think the ground set forth in section 43 (*a*) should be retained.

The cases that come under the clause are of two kinds: (1) Where a ryot has held lands at nominal rates, perhaps under verbal agreement or by perwangi, for service or favour done to or shown by a former proprietor. When the service and patron are forgotten, the right is questioned. It is either allowed to continue for sufficient reason, or the matter

compromised; the lover being the right to bring a suit. (2) Apart from special cases, there is the claim to advance an ordinary occupancy ryot to the rates paid by his fellows in the village.

The terms of this section would be improved by adding after the words "occupancy ryots" in the clause the words "of the same class," and giving an illustration of what is meant with respect to old standing ryots and new ones, who will mature into occupancy ryots carrying with them their heavy rack-rents.

CHAPTER V.

Bengal Government letter, paragraph 9.

10. *Sections* 44, 45, 47 *and* 48, *point* (*b*).—The idea of limiting the rent to a certain proportion of the value of the gross produce which has had to be abandoned appeared, at all events, to be based upon a certain fixed principle which was acceptable in many quarters. The limitations contained in these sections are of a more arbitrary character. The intention is, of course, to afford relief and protection to the ryot; but the justification must be sought for in the principle that a ryot should not be subjected to a sudden enhancement which he cannot afford to pay. Looking to the conditions under which enhancement may be allowed under the different sections, a distinction is apparent, and strict uniformity cannot be justified in respect of the limits proposed in different cases.

Take the case of enhancement based upon a ryot paying less than the prevailing rate (section 44), and compare it with the conditions under section 45, rise in prices. The latter case concerns the distribution of an unearned increment, the claims to which may be taken to be not unequally balanced on both sides. In the former case the landlord seeks what is really his right, viz. a rent which is not unfair, by comparison with others, which, upon the same comparison, the ryot should be able to pay in full, and for non-payment of which he can show no justification. An aggravated case of this kind would be where the ryot sued was sub-letting his lands at rack-rents far above the prevailing rate of his own class.

In the case of improvements (section 46), the landlord seems to have a right to full profits.

The following proposals based upon the above remarks are submitted:—

(*a*.) Accepted by the majority. (Weekes dissenting.)

In the case of section 44, clause (*a*), the limit should be removed.

(*b*.) Accepted by all. Section 46 to stand as at present.

(*c*.) Accepted by the majority. (D'Oyly dissenting.)

Section 47 to stand as at present.

(*d*.) Only two of those present (Messrs. Barlow and Kean) have been able to agree to the following proposal, viz —

Omit clause (*b*) in section 45, and enact that the enhancement allowed shall be equal to one-half the difference between the former rent and the rent arrived at by the calculation under clause (*c*). They think that there is at least an appearance of fairness about such mode of distribution. The zemindars doubtless believe they have a right to a larger share of the unearned increments, but it will be difficult for them to prove the fact, especially in view of the increased cost of cultivation which must necessarily follow the rise in price of the necessaries of life.

Messrs. D'Oyly, Weekes and Porch dissent here, and each hold a different view: the latter wishing to retain the section as it is.

In cases under all sections, sections 48 and 49 should guard against hardship.

CHAPTER V.

Bengal Government letter, paragraph 9, continued.

11. *Sections* 44 *to* 49 *continued*.—If the proposed limits are maintained, some provisions are really necessary to meet special cases where the preceding rent paid has been below the ordinary rate by reason of service or for any special cause. Take the case of an Indigo planter who accepted two annas per bigha from ryots who cultivated indigo for him, where the prevailing settlement rate for the lands was eight annas (a known case is referred to). If the ryots repudiate the contract, why should he be restricted to three annas rent.

CHAPTER V.

Bengal Government letter, paragraph 10.

12. *Section* 41. *Enhancement out of Court*.—We think there would be danger in allowing enhancements even under registered contract to the same extent as after suit. This contract system will most undoubtedly be abused in many cases.

Notwithstanding the determination often shown by the ryots in resisting open attempts to enhance rates, it is marvellous how easily they yield when the matter is worked privately and in detail against them by the zemindar. A late case in point occurred under the Court of Wards. We tried to enforce the prevailing rate against three recusant villages. The ryots combined and withstood us for some two years, refusing to pay any rent and bringing the affairs of the whole estate to a stand-still. We had to give up the estate to the minor before he came of age, since he expressed himself as certain that he could, by the exercise of family influence as he put it, set matters to rights. Sure enough he did so in an unusually short space of time, and the ryots who had withstood our open and fair attacks

under the law, registered engagements for the full rate demanded. The mode of working this sort of thing is well known, and was suggested during the struggle; it is to get at the principal men and win them over by secret concessions, and the body of the ryots are nowhere. The provision that the registering officer is to ascertain that the ryot understands and is willing to enter into the contract is really no safeguard, when one considers the injurious condition against themselves that ryots do accept. Having been primed up and brought to the registering office, a ryot rarely has the pluck to go back from his engagement. It may be necessary to allow contracts under registered engagements, but the provisions upon the subject should be restricted. A practical difficulty has been suggested as likely to arise from the indifference to and often unwillingness to enter into written engagements exhibited by the ryots. It is also asserted that they will never attend to register documents. There is certainly force in these objections.

CHAPTER V.

Bengal Government letter, paragraph 11.

13. *Section* 42 (1).—It is clear to us all that there is a danger of the levelling up of occupancy rents in the manner suggested in the paragraph, which is none the less real because it is at present a long way off.

Section 42 (1) read with Chapter VI and section 60 (9) are not perhaps to be solely charged with the effects likely to be produced, seeing that ordinary non-occupancy ryots, who ripen into occupancy ryots carrying with them the competition rates at which they entered, will supply a leverage that would work out the result. The idea that occupancy and non-occupancy rates are similar, or that according to principle the latter cannot be higher than the former, is not strictly correct. In old days, when the terms were not known, the older ryots paid the higher rates, because they held the best lands. The same state of things exists in Maldah now, although it is doubtful whether the occupancy lands are superior. In Purneah, where the quantity of superfluous land is great, no distinction of rate prevails. In other districts the operation of the law has created a distinction, and hence the non-occupancy rate is higher than the other in many cases. Unless some plan can be devised,—and it seems doubtful if this is possible in the absence of maxima limits,—for so regulating the prevailing rate clause as to prevent the rates paid by occupancy ryots of a later date being used as the standard for raising the rents of older ryots of the same class, there seems no way out of the difficulty, except to eliminate section 43 (*a*), an arrangement which we have already said we think unjust to the zemindars. Very strong objections are taken by the zemindar against this section. The Chanchal Manager reports a case that lately came under his notice. A tenant, with a holding rented at Rs. 84, died heirless and the holding reverted. He was surprised at the numerous offers made at a higher rental, until he found that the entire land was sublet for Rs. 156. Under the present law, he settled direct with the under-tenants at existing rates as ryots, who will now sit in their holdings and qualify for occupancy rights. Mr. Reily discusses the circumstances of this case upon the supposition that the occupier of such a holding had allowed it to go to sale and the zemindar had used his right of pre-emption to buy it, and had then settled it under section 42 (1).

He traces the difficulty which, under the circumstances of the case, the court would have felt in fixing the price under section 32 (4) as judged between him (the zemindar), liable to the condition of the law as to sub-letting, and another purchaser, not so fettered; points out, as compared with the probable high price paid for the land *plus* improvements the valueless nature of the purchase to the zemindar in connection with the restriction, under section 42; and finally demonstrates that, should these persons occupying the land be settled ryots in respect of other land, in order to save himself, the landlord must evict them in order to settle at full rates with an outsider or non-resident ryot, or take heavy *salami* to recoup himself.

The outcome of this appears to be a matter not apparently noticed. viz. that section 42 (1) is likely to operate to prevent settled ryots getting more land in their own village—a condition to be deplored—when the smallness of existing holdings is remembered. Mr. Weekes does not object to section 42; he considers that in all cases a non-occupancy ryot could be settled in the land under section 56.

Bengal Government letter, paragraph 12.

14. *Section* 216. *Bastu lands.*—The following account is given by the Collector of Bhagulpore:—"On the whole, it may be said that formerly cultivators as a rule paid nothing at all for bastu lands. Whether the land occupied by dwelling was included in the jote or holding, generally it was held rent-free *by cultivators*, and in many instances this is the case to the present day, though zemindars are now-a-days inclined to make as much as they can out of their zemindaries, and thus in new settlements it is frequently found that separate rents are charged for bastu lands, and in some cases at high rates. * * * * * Non-cultivators are charged 'basowri' rent according to their caste and trade. A Brahmin never would be charged; artizans often hold their houses free of rent, but give labour free in exchange; labourers similarly pay no rent for bastu, but work as 'begars;' telis and gowalas give an understood quantity of oil and ghee in exchange for free shops."

In Monghyr conditions are very similar. Ryots erect their houses on "dih" or "bastu" lands set apart for the purpose, and no rent is as a rule charged for such lands. Where rents are fixed, no enhancements are made, except in cases of shopkeepers, whose rents increase with their circumstances. In some places the lower classes pay rent for bastu lands. In others only shopkeepers are assessed. Sometimes the labouring classes pay in kind or by voluntary labour, and the petty tradesmen supply salt and tobacco in lieu of rent.

The Collector of Purneah notices that in most villages up to the present day no rent is levied from cultivating ryots or from "respectable ryots," Hindu and Mahomedan. This is the case in many pergunnahs. Telis and other low castes, non-cultivating persons, pay "betori" in some form. In Sultanpur havili and Seripore again, the radius of this circle of non-respectability is reduced to a money qualification of a 4-rupee rent-holding, showing an arbitrary encroachment upon right. English notions, as represented by the civil courts, have come a little into play of late: there have been two or three cases of ejectment even from bastu land following ejectment for arable lands; but this is the exception. A new form of compromise has appeared in a few places, and ryots building a new house have had deductions given them of the rent of the land taken, and in return have been assessed with "betori" at the usual rate of two annas a cottah. The Collector believes that the village site originally belonged to the village community and not to the zemindar: hence it was rent-free. He gives several cogent reasons for this opinion

The conditions of Maldah contrast with those of other districts, as here rent-free bastu lands do not appear to be known. Rents are liable to enhancement up to the prevailing rate.

In all districts alike, the practice seems to be that a ryot who has given up his jote is allowed to remain in his house lands upon such terms as may be agreed upon with the landlord. Several ryots examined in Bhagulpore stated that these terms were rent-free in villages where ordinary bastu holdings were free; and certain zemindars and pleaders corroborated the statements. It was, however, added by the latter that such indulgence was of grace, and not of right. The Munsif notices that decrees have been given for rent against ryots who pleaded previous non-payment, as both law and custom forbid that a ryot should obtain a permanent right in bastu land. There have also been cases where ryots have obtained rent-free decrees. Cases have occurred when maliks wished to eject ryots from bastu lands, in which the answer was that they had been held rent-free since the Permanent Settlement; such cases have been dismissed The uncertainty in connection with the subject of bastu lands and rent arising out of indefinite and varying custom gives an unscrupulous landlord full opportunity to worry his tenant.

We propose that, so long as a ryot cultivates in the village, he should not be liable to ejectment from his homestead land, nor to any increase of rent for the same except on the grounds that the area has been increased. This is necessary to check the tendency which ryots have to filch land and take up adjacent deserted *baris* for enclosure with their own. The majority (Barlow, D'Oyly, and Kean) consider that, when a ryot ceases to be a ryot, he should make his own terms with the landlord: provided that the occupier of bastu lands, when he ceases to be a ryot, owing to sale of his holding or otherwise, shall not be liable to eviction from his bastu lands without a month's notice. Messrs. Weekes and Porch consider that in such cases the occupier of the bastu lands should be entitled to hold on, provided he pays the rent customary for non-cultivators. They believe this arrangement to be according to existing custom. If protection in the way proposed is granted to the cultivating holder of bastu lands, some provision against sub-letting of homstead lands will be required. For at the time of settling a new village, when land is cheap, ryots take up more than they want for their own requirements in the most favoured situations. By-and-bye, when pressure begins, they are apt to sub-let their surplus lands in the centre of the village, thus injuring (1) the zemindar by competition, (2) the villagers by running up the rates, and (3) both parties in cases where the village site above flood level is limited in extent, by occupying lands required for ryots who take up new lands. When a tenant sub-lets bastu land, the majority (Barlow, Porch and Weekes) consider that the zemindar should be allowed to recover from him the amount at which the land is let, less 5 per cent.

CHAPTER V.

Bengal Government letter, paragraph 13.

15. *Section* 51(*a*).—The following cases of deterioration of land are noticed:—

Sudden and marked—

(*a*). Change in the course of a river, rendering a tract subject to inundation and jungle growth. This happens often in Purneah.

(*b*). Change in course and departure of a river, as in case of Mahanunda in Maldah.

(*c*). Cutting off the water-supply by construction of a road or embankment.

Other cases occurring gradually—

(*d*). Efflorescence of reh. This is little known here.

(*e*). Failure in repairing irrigation works (for making which there very likely was a previous enhancement).

(*f*). Natural deterioration of the soil from bad farming and over-cropping.

It might be well to add the words "either sudden or gradual" after "calamity" in this clause. If it is proposed to make any provision for point (*e*), a special clause would be necessary.

Sections 53 *and* 64 (3).—In the opinion of the majority (Weekes dissenting) a fixed proportion of the crop cannot fairly be considered, having regard to the rise and fall of prices, as a natural and equivalent antecedent of a money rent invariable over a term of years. Looking at the tremendous effect the application of section 64 (2) would have in parts of the country, where the bhaoli system prevails, the provision should be modified.

We desire to see added to section 53 (4b) the words "taking into account the risk run by the ryot in undertaking money payments," as we are convinced that the point may otherwise be overlooked in the civil court.

Bengal Government letter, paragraph 14.

16 (a). The idea that the sub-divisional prices current are the average of local markets, and that the district price-current lists are averages of the sub-divisional lists, is incorrect, at least as far as this division is concerned. The prices current represent the actual *retail* prices of articles at that date at the places named in the list.

(b). The price-lists are available for at least 15 years at all district and sub-divisional head-quarters, except the following:—

Soopool sub-division for 14 years, Purneah 12 years, Arrareah 7 years, Maldah, 12 years.

(c). The price-lists cannot be verified, as the retail vendors do not keep accounts for any time, if at all; but the majority of us (Barlow and Porch dissenting) consider that they can be approximately verified by comparison with the books of wholesale dealers at the most important marts in each sub-division, as records of the wholesale prices for the past 15 years have been found in at least one large mart in each sub-division, and because they consider that the fluctuations in retail prices can be gauged with tolerable accuracy by the fluctuations in wholesale prices.

(d). The results of the enquiries made lead us to believe that an approximately correct price-list for 15 years, for each of the staples shown in the list attached to Government of Bengal's letter (as now revised and returned, Appendix E), could be prepared for at least one large mart in each sub-division. This could generally be done upon the accounts of the wholesale merchants of that mart, but where deficiencies were found, they could be remedied by taking the price for any staple wanted from a neighbouring mart.

(e). The question as to whether enhancements can be fairly allowed in direct proportion to the rise in price, or whether it is not essential that some allowance should be made for the increased cost of production, has been dealt with in the remarks on section 45 (paragraph 10), so far as the members of the conference can agree upon the point, others will record their views separately.

(f). It is difficult to say whether any connection exists between jute and rice cultivation. If it be so, the connection is not necessarily that stated in the Bengal Government letter. During the present season, when the price of rice is undoubtedly very high, the Collectors of Purneah and Maldah state that an unusually large crop of jute has been sown, the price of jute being also exceptionally high. On the other hand, last year, when the price of rice was low, the cultivators were unwilling to grow jute because it was also cheap.

(g). The majority (Porch dissenting) consider that, with the exception of jute, there is no other crop in this division, the area of cultivation of which can be supposed to vary with the prices of staple food-grain.

(h). Adverting to paragraph 13 of Government of India's letter, we are of opinion that, as regards the future, trustworthy price-lists can be prepared, provided that a single price-list for a large area, say a sub-division, suffices. The price-lists cannot be made to distinguish the permanent for the temporary rise in prices, and the occasion when the tract has benefitted from the rise from those when it has suffered.

(i). On the whole, we accept the view that a sub-divisional price-list would furnish a fair index to the fluctuation which attend prices obtained by the cultivator in his village. Messrs. D'Oyly and Weekes indeed consider that one list for the whole district would suffice.

(j). As regards the use of the price-list when decided upon, Messrs. D'Oyly and Porch would use the same in the manner prescribed in sections 45, 48 and 49. Messrs. Barlow and Kean agree in this, subject to the proposals supported by them in connection with section 45, and recorded in paragraph 10 above. Mr. Weekes will record his opinion separately.

CHAPTER VI.

Bengal Government letter, paragraph 16.

17. This chapter does not do much to improve the position of the non-occupancy ryot. Section 60 virtually gives to those who come to know and understand the law a statutory lease for 5 years at fair and equitable rates as compensation for disturbance, and a few ryots by help of this may acquire occupancy rights.

It is probable that short leases will become the rule, but we do not anticipate that, for a considerable time to come, the provisions of the chapter will lead to any serious disturbance or ejectment of ryots here. This may happen early in parts of the country where, under the old law, the distinction between different classes of ryots was fully and widely recognized and worked up to, especially if it is found that the position of the occupancy ryot is materially improved under the new law; but here it is different. Except where there has been litigation, the ryots understand little about occupancy rights, and the zemindars find ways for enhancing rents even where they exist. The result has been that ryots sit on, and proceedings to oust a ryot, simply to prevent his acquiring occupancy rights, are not usual. All this may, and if the expectation of the opponent of the Bill is fulfilled that it will set class against class, will be changed, but it will take time.

No doubt danger exists, as pointed out in Government letter, that hereafter occupancy rates will be levelled up. We see no way of avoiding this in the absence of the arrangement for maxima limits, unless occupancy rights are at once given to all resident ryots in respect of lands cultivated by them, and without limit as regards the time for which they have held the lands.

CHAPTER VII.

Bengal Government letter, paragraph 17.

18. We are unanimously of opinion that the provisions of this chapter are unworkable and should be omitted. The ryots will rarely register a lease, and verbal engagements are the rule of leasing amongst them. If the arrangement proposed by us under section 31, clauses (*g*) and (*f*), are carried out, the sub-tenants of the occupancy ryots, who will form a large proportion of the whole body, will otherwise obtain protection.

CHAPTER V.

Section 38.—The object of this is not clear; every disturbance in the relations of the landlord and tenant is against the chance of the latter being suffered to sit on to acquire occupancy rights, and is suggestive of a fresh enhancement of his rent.

We are of opinion the section should be omitted.

CHAPTER VIII.

Bengal Government letter, paragraph 18.

19. *Section* 67.—The wording of clause 2 of this section is not very clear: which is to prevail, the number of instalments and dates of payment, &c., fixed by Government, or those fixed by agreement, or in the absence of agreement by custom? This question of adjusting instalments to the present conditions of crops and harvests is a matter of first importance, and proper regulation of the same will go far to keep the cultivator out of the hands of money-lenders.

CHAPTER VIII.

Section 69.—We certainly think that, except with the express consent of the ryots, payment should under no circumstances be allowed to be credited against a demand already barred by limitation. We are unanimous of opinion that in place of section 69 it should be enacted that any payment made should be credited to the oldest arrear outstanding which is not barred by limitation.

A ryot owing three years' rent under section 69 could, by appropriating his payment for the demand of the current or next preceding year, bar recovery of the oldest arrears, as limitation might apply to these two days after the payment was made. Again, should he appropriate his payment to the current year's demand, he would bar the right of payment.

CHAPTER VIII.

Section 70—A form of receipt and statement of account is approved and submitted, Appendices C and D. It corresponds with those printed with the Bill, except that, in the receipt form, columns to distinguish between current and arrear payments, and in the account statement, description and qualities of land have been entered. This matter must, however, remain incomplete until arrangements are made to secure the numbering of each field in a village, so that same may be entered in receipts and account statements to render them really useful documents. This would be one of the greatest reforms possible. To effect this, it has been suggested that every zemindar should be bound to keep and register a village map, showing the numbers of all fields, which numbers should correspond with those exhibited in the receipts, &c. The idea is well worthy of consideration.

CHAPTER IX.

Bengal Government letter, paragraph 19.

20. *Sections* 88 *and* 89.—Some doubt has been expressed whether it is in the interests of the ryots that they should have a preferential right to carry out improvements, rather than the owner, who has a greater command of capital. The Deputy Collector of Jamui writes:—"The time is yet remote when ryots will be able to carry out improvement, at least in Behar; and if therefore improvements are expected, the landlord should have the prior right. But even with such right he will not be forward in making improvements; for under sections 46 to 48 he may be altogether refused any enhancement on the ground of such improvements. The result will be in Behar that, if the commutation of rents comes to prevail, the "pynes" and "ahars" which are now repaired by the landlord's capital and organization will be allowed to fall into ruin, and for a long time thereafter the ryot will suffer. When they shall have learned the use and means of co-operation, the landlord will not allow them the use of these water-courses without a specific rent for the lands." The remedy for this seems to be that, at the time of commuting produce rents into money, the question of these water rights should be considered and dealt with; an addition to section 53 (4) should be made to this effect. The Collector of Purneah would strike out the last clause of section 89 (1) and clause 2 of same section; also section 90 (2) and all sections 91, 92, 93 and 94, on the ground that zemindars never make improvements, and should not be tempted to do so against the ryot's will, in order to prevent the ryot doing it himself. The majority of us (Weekes and Kean dissenting) accept this chapter as it stands.

As regards the construction of wells by non-occupancy ryots, they are at present allowed to construct kutcha wells without hinderance. There are no canals (except in Khurrukpore) in this division; but on more than one occasion difficulty has been experienced in carrying out schemes for bringing water from a long distance by means of irrigation channels which will pass through other zemindaries, and the work has proved impracticable. It would seem that some provision in the law is required to meet this; but the proper place for legislation of this kind would be, it seems to us, the Land Acquisition Law and Rules, or a separate Act. It might be enacted that on application to the Collector by the zemindar, or a proportion of the tenants, and a sufficient guarantee for the needful funds being furnished, land required for purposes of this sort might be acquired in the usual way.

It has been represented that for the purposes of village roads, burial grounds, sites for markets and villages, &c., similar provisions will be necessary. Heretofore the zemindar was always able to arrange for these; but, as under the new Act, his dominion over the property may be weakened, difficulty may occur in the future.

The Chanchal Manager explains that, founded upon the necessities of the locality, a saving clause is inserted in leases and uniformly acted up to, that the landlord may resume crop land required for new village sites. Abatement of rent is allowed, and in case of Chanchal estate at least, during the past 7 years, compensation has been granted for crops injured. The custom is an ancient one and accepted readily by the ryots without objection, who see clearly enough that the action of the river may make it necessary some day for them in turn to search for a new site for their homesteads.

CHAPTER IX.

Bengal Government letter, paragraph 20.

21. *Section* 96.—We all consider that the provisions of this section are unduly harsh towards the landlord. There have been one or two cases brought forward of forcible eviction, but as a rule tenants who abandon their holdings are bad cultivators, overburdened with two or three years' arrears, who clear out. The risk of complications, such as those described in paragraph 20 of the Bengal Government letter, occurring we judge to be small, and for one case of hardship to the tenant there would, under clause 3, be many befalling the landlord, as the land would remain unlet for two years, the term appointed therein.

We think clause 3 should be struck out, and the matter left to be dealt with under the Specific Relief Act.

CHAPTER IX.

Bengal Government letter, paragraph 21.

22. *Section* 99.—We agree that a zemindar should be restricted to external measurements in case of lakhiraj lands, except with written permission of the Collector on good and sufficient cause being shown.

CHAPTER IX.

Section 101.—The majority are of opinion that the measurement should be made by the local measure. Messrs. Barlow and Kean would use the Gunter's chain, with a view to secure accurate measurement and defeat fraud, which is a first essential.

Bengal Government letter, paragraph 22.

23. *Section* 102, *&c.*—We approve of the provisions of this chapter. If the landlords object to them, they have the remedy in their own hands, and they should so arrange their affairs as to make the application of the law uncalled for.

We have some misgivings as to the wording of clauses A and B, section 102. The reason why District Officers so favour the arrangement for the appointment of a Joint Manager is the state of confusion and annoyance to the tenant that occurs where disputes are rife amongst shareholders. The conditions are fairly set out in paragraph 134 of the Rent Commission's report Whether the position is sufficiently reached by the proposed provision of section 102, which are limited to (*a*) inconvenience to the public, and (*b*) injury to private right, is perhaps a little doubtful.

CHAPTER X.

Bengal Government letter, paragraph 23.

24. The following points are noticed:—(*a*) Nothing is said about measurement, which must be the basis of the record (section 111) in every case.

(*b*) In clause (*a*), section 111, the words "father's name, caste and residence" should be added. In clause (*b*), "class of tenure-holder." In clause (*c*) should be added "including homestead lands."

(*c*) Headings for classification of land according to crops and rates of rent, and showing improvements and by whom made, might be added with advantage

(*d*). Section 223 should be more general, and leave it open to Government to invest revenue officers engaged in any work under the Act with any and all powers under existing laws. This would enable officers engaged in preparing the record of rights or settling rents under this chapter to be vested with the powers of Survey and Settlement Officers for causing the attendance of parties and enquiring into matters.

With reference to section 116 (2), the majority of us consider that the correctness of the record in undisputed cases should only be presumed until the contrary is shown. There is a risk of persons (more likely to be ryots than zemindar) being absent at the time the record is made, who would be for ever bound by it. All cases, however, wherein both sides have

appeared before the revenue officer, and consented to and signed the entry, should be declared by law conclusively settled. For the rest, a term might be fixed within which absent persons might be permitted to appear and show cause for changing an entry made; and a term should be fixed within which a disputed entry must be carried in appeal, failing which all entries should become final. This will tend to hasten the completion of the record upon strictly fair grounds. In carrying out the provisions of this chapter, the first thing prepared should be a cadastral map of each village with a serial list of fields with the class of land against each. The number of the field in this map should be given in heading 111C.

It has been pointed out well that the whole effect of all this valuable work will be lost, unless arrangements are made for the mutation of names, &c., after the record is complete. This point should not be lost sight of.

CHAPTER X.

Some exemption should be allowed from the rule, section 120, for dearah and other lands, the condition of which in the neighbourhood of large rivers vary so much.

CHAPTERS XI AND XII.

Bengal Government letter, paragraph 24.

25. The majority (Porch dissenting) do not believe that the procedure under Chapter XI will have much practical effect. The difficulty of deciding the exact class to which any particular land belongs, which may be made the subject of a suit, is a real one, and cannot be avoided. The preparation of a table of rates in the manner prescribed will be a very difficult matter, and trained officers will be required for the work.

Section 138.—We think that, in addition to the lands described in clauses 1 and 2 of this section, the land which *bonâ fide* forms part of the compound or premises around proprietary buildings should be included as private land. Being uncultivated, they are not included in the definitions. Portions of such lands are sometimes let for the purpose of a crop being taken off them, but it seems plain that an occupancy right should not be allowed to arise in such cases.

CHAPTER XIII.

Bengal Government letter, paragraph 25.

26. We all consider that, notwithstanding the provision in section 141 (3) for an intermediate order, the objections which are strongly urged by the zemindar that in numerous cases the delay that must occur in applying to the courts to effect distraint will render the proceedings useless, are well founded. It is reported that in Chanchal estate alone there are 2,000 tenants who come yearly from Bhagulpore and Durbhunga, cultivate a crop on the newly formed lands, and are off again the moment the rivers rise. The majority think (D'Oyly and Kean dissenting) that, if the provisions of the law for securing the payment of rent, whether by sale or under the penalty of eviction, be made effectual in other cases, it would meet the objections if the distraint procedure was limited to the case of non-occupancy and other subordinate ryots. We unanimously consider the following arrangement worthy of notice, which would leave the power of making distraint in the hands of the landholder as at present, and at the same time furnish a check upon abuses.

At the time of distraint the defaulter should be furnished with an account showing (1) area and boundaries of the holding for rent of which distraint is made; (2) rate and amount of rental, the latter divided into arrear and current, in order to prevent the money realized being credited to previous arrears as is often done; (3) the portion of the holding, the crop of which is distrained, to meet the demand, for in a large holding the whole crop should not be distrained. A duplicate of this account should be despatched at the same time by the distrainer to the court having jurisdiction, and he should further be bound to intimate subsequently to the court when the demand has been satisfied or arrangements have been made with the defaulter.

The penalties provided under section 220 will provide sufficient check in these cases.

CHAPTER XIV.

Bengal Government letter, paragraph 26.

27. *Procedure.*—We have doubt as to the propriety of section 163 (*e*) as regards the ryot. It is true that the preparation of a written statement by a mooktear means the putting forward of a number of false or useless claims; on the other hand, an ignorant ryot may fail to take up or depose to the most important points of his case. Perhaps it would suffice if the leave of court to put in a written statement might be asked for upon plain paper; but we should prefer to see clause (*e*), section 163, omitted.

We hope that the arrangement for suing ryots collectively will be found practicable.

CHAPTER XVI.

Bengal Government letter, paragraph 27.

28. The majority of us (Weekes dissenting) approve of this chapter. A provision should be added in section 199, permitting of adjournment of a sale to the next or subsequent day, as it has sometimes been found impossible to complete the sale of a large number of tenures on

the date fixed, and doubt has been cast upon the legality of an adjournment. Provision is also required in the chapter permitting a Collector to make over the duty of holding these sales to a Deputy Collector.

CHAPTER XVII.

Bengal Government letter, paragraph 29.

29. *Section* 210.—We approve of the provision of this section, and have nothing to add to or take away from same.

Bengal Government letter, paragraph 30.

30. *Section* 227.—We are unanimously of opinion that dues on account of phulkur and private ferries should be added here. The latter often forms part of the assets of settled estates. The majority (Messrs. Barlow and Kean dissenting) are of opinion that the provisions of section 227 are not sufficient to cover the case of pasturage dues recoverable by custom in the shape of a rate per head for cattle from persons bringing them into jungly tract for purposes of grazing, because the courts would probably hold that the relation of landlord and tenant does not exist between the person having the right of pasturage dues and the persons from whom he seeks to recover pasturage dues. This would apply especially to the case of mehals like the "Bhaisoondah" mehals in Bhagulpore district, the owner of which, though he has not got a single cottah of land, has the right to collect pasturage dues from every owner of buffalo throughout the Colgong pergunnah. Next where, as frequently happens in this division, cattle are brought from long distances (often more than 50 miles) to graze in jungle tracts, the owner of such tracts, even if he succeeds in getting a decree, has little prospect of executing it. The custom is that the proprietor detains cattle until the dues are paid, and this ensures recovery. The majority are of opinion that an addition should be made to the section to the following effect, that the relation of landlord and tenant shall be held to subsist between the owners and users of such rights. They also think that, in the case of pasturage, the custom which obtains at present of the owner of such right having a lien on such cattle should be legalized.

Bengal Government letter, paragraphs 31-32.

31. *Point* 2. *Paragraph* 2 *of Government of India's letter No.* 784, *dated 5th May* 1884 — No information as to the existence of any dependent taluq of the kind is traceable in the official records of this division or otherwise. We refrain from offering any opinion upon the subject.

Point 3.—The majority of us (Week's dissenting) think that it would be a grievous hardship to make rent-free tenure-holders liable to be sold up for arrear of cess. The smaller holdings would be broken up rapidly.

Bengal Government letter, paragraph 33.

32. *Government of India's letter No.* 784, *paragraph* 2. *Point* 2.—A detailed description of the *hal hasila* tenure is given below. It shows a tendency towards decreasing in favour of the ordinary system of cultivation, but it still prevails extensively in Purneah and Maldah districts. It is found also in two pergunnahs in North Bhagulpore where the soil is poor and liable to submersion. There are certain other tenures known in Bhagulpore district of a similar character. In the Muddehpurah sub-division, on the banks of the Kosi and Gugri, ryots pay rent only for those lands the crops of which are reaped. The reason for this is the danger of destruction by inundation. Yearly measurements are made. The system is termed *hussoaphar*. A tendency is said to have lately been shown by the zemindar to do away with the custom and make the ryot execute a kabulyat to pay rent, a specific rate on a specified area, with no condition for abatement in case of partial failure.

In the north-east of Bhagulpore is a system called *hustabudhi*, where the ryot pays a separate rent for each crop he cultivates according to the area.

Another system is termed *sairabadi*. Here a ryot cultivates any lands he can get possession of for the season, and pays cash rent according to the area of the crop raised.

Hal hasila lands.—The ordinary meaning of the term *hal hasila* is where rent is charged only for the actual area cultivated, and sometimes according to the crop raised in each year. The system is liable to variation in different localities.

In North Bhagulpore the ryots hold a fixed area of land, but pay in each year only for the area cultivated in that year. The lands are either inferior high lands or low lands liable to be submerged frequently. The former owing to the poverty of the soil have to be left fallow for a year or two to allow them to recover; and the latter, while under water, cannot be cultivated. The cultivated lands are measured every year, and rent charged at the prevailing rate for class. No allowance is made for partial failure. No attempts have hitherto been made by zemindars to re-settle lands thus left fallow. It is not certain that as demand for land increases, zemindars will continue to show forbearance.

In Purneah *hal hasila* tenants only have to pay rent for the lands actually cultivated in each year. Measurements are effected yearly to ascertain the rent payable. Formerly rates varied with the actual crops grown; now this has nearly gone out of use, and one rate prevails for all crops.

In some cases, where ryots hold considerable areas (usually limited by boundaries only), they retain a lien on the whole area, while they only pay rent for the portion actually cultivated.

In Maldah two kinds of *hal hasila* system prevail. About Mathurapore the tenants take the lease of a specified area of land, for which they are bound to pay a specified rent for the rubbi crop, whether cultivated or not; and an additional rent, at a specified rate,

is charged for such lands of the holding upon which a second or bhadoi crop is grown; but rent for such second crop is not chargeable if the ryot chooses not to grow it. It is said that in this part ryots under the *hal hasila* system acquire occupancy rights in their lands. About Chanchal, in the north of Maldah, the *hal hasila* system, as involving exchange of lands by individual ryots, at least once every three years, if not oftener, prevails. But the tendency has grown up to retain continuously under cultivation the most favoured qualities of land, either as to situation or fertility, and only exchange the more distant and less fertile lands. Even in the last respect the margin of land that it is possible to exchange is decreasing. A local peculiarity as regards exchange of land is the following. If the land not required for the cultivation of the season is remote from the bank of a river, the zemindar at once resumes it on the tenant ceasing to use it. If it is near a river, the tenant does not give up his lien, but has to pay the zemindar a small rental on each bigha of the unused land, generally calculated on the supposition that the land has yielded one crop during the year. This arrangement is again modified by conditions of population. Where demand for land is small, the zemindar is glad to accept anything he can get from the holder of the disused land.

The rents for *hal hasila* land in this estate are paid in the lump after measurement of the land. While the annual receipts (farrucks) show a varying jumma at least every three years, if not yearly, leases, where they exist, neither give boundaries nor identify the land. Consequently, while it is certain that a tenant has held his homestead lands ever since he entered the village, and at least some portion of the cultivated lands for over 12 years, he would be entirely dependent upon oral evidence to prove the fact.

A consideration of the above facts would go to show that in the case of two out of the three kinds of *hal hasila* tenures, the ordinary incidents of ryoti lands, as set forth in the Act, might apply, and would benefit the ryots to the extent that they would acquire occupancy rights. These cases would be (1) the system at Mathurapore, and (2) the system at Purneah, where a fixed area of land is retained, although the rent for the whole varies according to the quantity of land actually cultivated in each year. In the remaining case (as at Chanchal), where the locality and quantity of cultivation changes from time to time, the incidents of ryoti land would not apply, or apply with difficulty. Owing to the varying nature of tenures of this class, it seems to us that "a saving of customary and other conditions" by specific applications of provisions in the law (as in the case of section 214) is undesirable. We would prefer to see the subject dealt with in the same fashion as other special rights have been dealt with in section 227, *i.e.*, it should be enacted that the general provisions of the law should apply to such tenures "as far as may be, and no further," leaving the courts to decide each case upon its own merits.

Bengal Government letter, paragraph 34.

33. *Government of India's letter No.* 784, *paragraph* 2, *clause* 6.—The following account of a *gorabundi* holding is taken from page 143, Hunter's "Statistical Account of Bengal," Volume XIV (Bhagulpore District).

Since the introduction of Act X of 1859, the word *gora* has come into use to designate a ryoti tenure, the rent of which is not liable to increase. A *gorabundi* tenure formerly meant a holding in which the cultivator had a hereditary right of occupancy, and which was not generally transferable (though in some part of the district alienations were sanctioned by usage), but of which the rent was not necessarily fixed for ever. The Deputy Collector distinguishes three forms—first class *gora* tenures are those which possess the characteristics of a transferable and hereditary holding at fixed rates; second class *goras* are not transferable, but the rent is not liable to enhancement; and third class *goras* are such as before the passing of Act X of 1859 possessed the characteristics of an occupancy holding as defined in that Act, the rent being variable. The last of these, which is in fact the ordinary occupancy tenure, is beginning to become a transferable property, particularly in the part of the district bordering on Monghyr.

In Volume XV (Monghyr district) he has as follows at page 117:—

Gorabundi is a holding equivalent to the *jumma mokurraree* of Bengal, signifies that the ryot holds at a fixed rent not liable to be raised. This right, which is founded on the custom of the country, was legalised by the Rent Law, where the rent could be proved not to have been enhanced since the Permanent Settlement. Moreover 20 years of such unchanged possession gave a presumption on the part of the tenant that it had not been enhanced during the longer period which the zemindar was bound to rebut. Such holdings are very frequently met with north of the Ganges, but are not so in the south of the district. The term *gorabundi* is often applied by ryots to other tenures, under the supposition that holding at a fixed rent for 20 years gives them a right to hold at a fixed rent for ever; for instance, many ryots on dearah lands which did not exist at the date of the Permanent Settlement call themselves *goradars* on the plea of their rent never having been increased. The Landholders' Association here give the following account:—In the pre-Act X period, *gorabundi* was used to signify the holdings of ryots, for which there were no leases for terms, but which were held under jummabundi It did not import fixity of rent or transferability. In some cases, if the holding was an ancient one, it might convey an occupancy right, but this was not a necessary incident of the holding. Some time after the passing of Act X, the word came to be used in legal pleadings for ryoti holdings, in respect of which the ryot claimed exemption from enhancement under sections 3 and 4. The presumption referred to in section 4 could not apply to lands held for terms of years, but it could apply to lands held *gorabundi*, whether the holding dated from the Permanent

Settlement or not. Hence the term *gorabundi* or *gora* came to be used to designate holdings which were claimed to be held from the Permanent Settlement, and *primâ facie* proof of which was unchangeableness of rent for 20 years before the commencement of the suit.

The case of Mahant Chatterbhuz Bharti *versus* Janky Pershad, reported at page 298, C. L. R., Volume IV, shows that *gorabundi* holdings are not essentially different from occupancy tenures.

Without offering an opinion as to the exact original meaning of the term *gorabundi*, we are satisfied that it now is used and understood by the ryots to mean a ryoti holding at fixed rates. There are many instances of these holdings being transferred. We (Messrs. Barlow, Kean, and D'Oyly) consider that these holdings should be subject to pre-emption. Messrs. Porch and Weekes expressed no opinion on this question, as there are no *gorabundi* tenures in their districts.

CHAPTER I.

34. *Section* 3, *clause* 5.—The definition of "rent" takes no account of service, *plus* money or kind, as a consideration for which land is held. Ryots in indigo concerns often hold lands at nominal rates of rent on condition of cultivating indigo. Palkee-bearers do the same on account of furnishing service, which is not necessarily rendered gratis.

CHAPTER V.

35. *Section* 33.—Where a sale is otherwise than in execution of a decree for arrears of rent, notice of sale ought to be given to the landlord to enable him to exercise his right of pre-emption. If anything like the proposals made by us in connection with section 31 is finally decided upon, this chapter will, however, be generally modified.

CHAPTER V.

36. *Section* 43.—Referring to point *a*, paragraph 13 of the Government of India's letter, the majority (Weekes and Porch dissenting) think that the omission of a provision similar to that contained in section 74 (1), clause 2 of the draft Bill of 1883 (enhancement upon the ground of the increase in the productive powers of the land, otherwise than by the sole agency or at the sole expense of the ryot, &c.) is to be regretted. The Select Committee appear to have left out this provision because experience has shown that it can be so little worked. Of course the maxima limit for rent having been given up, owing to the difficulty of obtaining information as to the productive powers of land, affords a strong argument for abandoning this also. Nevertheless the principle is sound, and has all along been recognized. Moreover its admission in the present Bill is involved in the provision for enhancement in consequence of change produced by fluvial action, section 43 (*d*), and in that for reduction in consequence of deterioration, section 51 (*a*). The zemindar will regard the omission of this provision as a further direct attack upon their interests. If it was allowed to stand, persons would be responsible for trying their chances under it, and could blame no one in case of failure. When so much protection is accorded to the ryot, everything withdrawn from the zemindar is likely to be regarded as of exaggerated value.

CHAPTER V.

37. *Section* 51 (*b*).—Some regulation as to period seems necessary here, similar to the quinquennial term in section 45 (*a*). Prices go up and down quickly. After an enhancement under section 45 (*a*), which should stand for 15 years under section 50 (1), is a ryot to be allowed to claim reduction on a fall of prices the succeeding year? and if they go up again one year after, is the landlord to have any, and what, remedy?

CHAPTER V.

38. *Section* 53.—The suggestions contained in Mr. Reynolds' dissent, printed at page 276 of *Gazette of India*, 12th April 1884, seem to be good and should be adopted.

CHAPTER VI.

39. *Section* 57.—There is a practical difficulty here that ryots often are unwilling to enter into written engagements. In the Court of Wards' Estate, Chanchal, the Board had to sanction the discontinuance of the efforts of the Manager to induce the ryots to accept pottahs under the rules.

CHAPTER VIII.

40. *Section* 77.—In reports from this division, attention has twice been called to the fact that in numerous cases holdings (occupancy right) if sold will not fetch one year's rent. The Manager of Chanchal Estate reports that if 20,000 out of the total number, of holdings there were offered for sale, they would not fetch half a year's rent. The reason is plain. Occupancy ryots pay Re. 1 to Re. 1-2, while non-occupancy ryots pay annas eight per bigha for land, which is plentiful. Statistics show that in 49 cases, where sale of the holding was resorted to, only 18 per cent. of the amount decreed was realized; while in 26 cases, where the court decreed ejectment in the event of non-payment under section 52, Act VIII (B. C.) of 1869, the whole amount was realized. This result seems to show that a ryot can and will successfully exert himself to pay under threat of eviction, where he will let his holding be sold to his own loss and that of the landlord. We

perceive plainly that ejectment is inconsistent with the provisions of the Bill in essential points; but we consider that security for rents is a matter of primary importance, and cannot be left where it is. The majority of us (Weekes dissenting) propose that the right of sale should be allowed to the landlord once a year, and for not less than a full year's demand. On a decree being given, the landlord should be allowed to claim an order for ejectment if the arrears, &c., are not paid within 15 days. The ryot may then claim a sale instead of ejectment; but in this case he must deposit the amount of the decree. This procedure would save the intolerable delay attending the execution of a decree, and would secure prompt realization of his rents by the landlord; while, where the ryot wanted to force a sale, he could secure this.

CHAPTER VIII.

41. *Section* 80.—We consider that it would be beneficial if the word "may" was changed into "shall if claimed" in clause I, and into "shall" in clause II of this section.

CHAPTER IX.

42. *Section* 91.—Ryots should be allowed to register improvements as well as landlords. This would assist the disposal of compensation claims under section 93.

CHAPTER XV.

A provision is required to regulate the place where the sale of holdings should be held. It is beyond question that the sale at the court of holdings which lie at distance in the interior leads to their fetching absurdly low prices. It is the ryots of the locality where the holding is situated who are likely to pay a fair price The Chanchal Manager reports that in 64 cases of holdings sold, which were within eight miles of the sudder station (court), the price fetched was Rs 912, or enough to cover the arrear. In 68 other cases involving distant jotes, the sum recovered was only Rs. 52. This is really an important question for both sides.

G. N. Barlow, *Commissioner.*
H. Kean, *Collector, Monghyr.*
W. H. D'Oyly, *Collector, Bhagulpore.*
R. Porch, *Collector, Maldah.*
A. Weekes, *Collector, Purneah.*

APPENDIX A.

Statement showing the number of partitions sanctioned and completed during each decade in the districts of the Bhagulpore Division, beginning from end of 1882-83 *and counting back to the earliest date of which the records furnish information.*

Districts.	1793-94 to 1802-3.	1803-4 to 1812-13.	1813-14 to 1822-23.	1823-24 to 1832-33.	1833-34 to 1842-43.	1843-44 to 1852-53.	1853-54 to 1862-63.	1863-64 to 1872-73.	1873-74 to 1882-83.	Total.
Monghyr	...	...	...	...	30	17	93	253	383	776
Bhagulpore	...	6	24	11	23	13	62	142	139	420
Purneah	2	1	...	...	1	4	12	1	9	30
Maldah	...	...	...	...	...	2	4	4	...	10
										1,236

APPENDIX B.

Statement showing the total number of occupancy holdings sold and the number purchased by Mahajans in the Regulation Districts of the Bhagulpore Division during the years 1880, 1881, *and* 1882 *according to records of the Civil Court and Registration Offices.*

Ascertained from Registration records.				From Civil Court records.		
Name of District.		Year.	Total number of occupancy holdings sold.	Number bought by mahajans.	Total number sold.	Number bought by mahajans.
Monghyr		1880	247	158	95	29
		1881	214	171	48	6
		1882	419	146	58	27
Total ...		.....	880	475	201	62
Bhagulpore		1880	676	17	112	47
		1881		29	51	33
		1882		64	86	20
Total ...		.....	676	110	249	100
Purneah		1880	621	9(a)	148	35
		1881	550	145	122	31
		1882	613	97	196(b)	35(b)
Total ...		.....	1,784	251	466	101
Maldah		1880	3,032	218	925	29
		1881	2,592	93	707	24
		1882	3,587	170	747	36
Total ...		.....	9,211	481	2,379	89
Grand Total ...		.....	11,875	1,317	3,295	352

(a) Only three months' figures ascertained.
(b) Figures for Kishengunge Munsifees (2) not ascertained.

APPENDIX C.

Form of Receipt.

1. Number
2. Year
3. Name of village thanah
4. Tenant's name
5. Particulars of his holding (area, rent, &c.)—

   Nukdi bighas Rs.

   Bhaoli bighas Maunds or Rs.

   Sayer { Bunker Rs. / Julker Rs. / Phulker Rs. }

   Government cesses { Road cess / Public Works cess }
6. Through whom paid
7. Date of payment
8. Amount paid (particulars on reverse) Rs.
9. Current rent
10. Arrear rent
11. Current cesses
12. Arrear cesses
13. Signature of landlord or authorized agent

Form of Receipt.

1. Number
2. Year
3. Name of village thanah
4. Tenant's name
5. Particulars of his holding (area, rent, &c).

   Nukdi bighas Rs.

   Bhaoli bighas Maunds or Rs.

   Sayer ... { Bunker Rs. / Julker Rs / Phulker Rs. }

   Government cesses { Road cess / Public Works cess }
6. Through whom paid
7. Date of payment
8. Amount paid (particulars on reverse) Rs.
9. Current rent
10. Arrear rent
11. Current cesses
12. Arrear cesses
13. Signature of landlord or authorized agent

Section 69 of the Bengal Tenancy Act, 1884, provides as follows :—

69 (1).—When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the appropriation of payments shall be credited accordingly

69 (2) —If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

| | | |

APPENDIX D.

No.
Farkhati of tenants of Estate
* Number of kurcha

Account of
Residence
Farkhati for the year

Taraff
Pergunnah

Year date in English.
Year date in Bengali.

Particulars.	Number of the plot.	Area.	Rate.	Rental.
Bastu				
Udbastu				
Garden				
Mulberry, &c.				
Crops.				
Two crops lands—				
First class				
Second „				
Third „				
One crop lands—				
First class				
Second „				
Special crop lands—				
Thatching grass				
Fallow				
Sayer				
Road and Public Works cesses				

Arrear
Arrear as ascertained this year
Interest
Arrear Road and Public Works cesses

Amount in words

No.
Farkhati of tenants of Estate
Number of kurcha

Account of
Residence
Farkhati for the year

Taraff
Pergunnah

Year date in English.
Year date in Bengali.

Particulars.	Number of the plot.	Area.	Rate.	Rental.
Bastu				
Udbastu				
Garden				
Mulberry, &c.				
Crops.				
Two crops lands—				
First class				
Second „				
Third „				
One crop lands—				
First class				
Second „				
Special crop lands—				
Thatching grass				
Fallow				
Sayer				
Road and Public Works cesses				

Arrear
Arrear as ascertained this year
Interest
Arrear Road and Public Works cesses

Amounts in words

Commissioner.

Details of amount collected as per back.

Number of cheque.	Date and year.	Amount.

APPENDIX E.

Statement showing the Principal Food-grains of all districts, except those of the Chota Nagpore and Orissa Divisions, and the approximate proportion which the outturn of each bears to the entire outturn of Food-grains in the district.

Name of District.		Principal food-grains.	Proportion of outturn borne to the total outturn of food-grains in the district.	Remarks.
			Per cent.	
Burdwan Division	Burdwan	Rice	88	
		Pulses	10	
		Wheat	2	
	Bankoora	Rice	87·50	
		Pulses	6·25	
		Wheat, Indian-corn, &c.	6·25	
	Beerbhoom	Rice	85	
		Wheat	9	
		Pulses	6	
	Midnapore	Rice	100	Wheat and maize also produced to a small extent.
	Hooghly	Rice	87·5	
		Pulses	12·5	
	24-Pergunnahs	Rice	88·8	
		Pulses	11·2	
Presidency Division	Nuddea	Rice	.....	
		Pulses	.....	
		Barley	.....	
	Khulna	Rice	87·5	
		Pulses	12·5	
	Jessore	Rice	88	
		Pulses	10	
		Wheat, cheena and barley	2	
	Moorshedabad	Rice	90	
		Kalai	3	
		Gram	2	
		Other grains	5	
Rajshahye Division	Dinagepore	Rice	92	
		Kalai	68	
	Rajshahye	Rice	75	
		Pulses	18·75	
		Wheat, &c.	6·25	
	Rungpore	Rice	88	
		Khesari	8	
		Wheat	4	
	Bogra	Rice	88	
		Gram and pulses	9	
		Cheena	3	
	Pubna	Rice	90	
		Pulses	5	
		Millets	5	
Dacca Division	Dacca	Rice	62·50	
		Gram, cheena, and pulses	37·50	
	Furreedpore	Rice	75	
		Cheena	8	
		Pulses	6	
		Other crops	11	Apparently these are not all food-grain crops.
	Backergunge	Rice	75	
		Kalai or khesari	15·75	
		Masuri	9·25	
	Mymenaingh	Rice	45	
		Kalai	22	
		Other food-grains	33	
	Tipperah	Rice	100	
Chittagong Division	Chittagong	Rice	89	
		Pulses	11	
	Noakholly	Rice	92	
		Gram and pulses	8	
Patna Division	Patna	Rice	68·75	
		Indian-corn	12·50	
		Barley	18·75	
	Gya	Rice	50	
		Gram	25	
		Wheat	18·75	
		Other crops	6·25	
	Shahabad	Rice	70	
		Wheat	14	
		Barley	7	
		Other grains	9	
	Durbhunga	Rice	62·5	
		Millet	25	
		Indian-corn	12·5	
	Mozufferpore	Rice	37·50	
		Maize	22	
		Barley	12·50	
		Other crops	28	
	Sarun	Indian-corn	40	
		Rice	20	
		Barley	15	
		Other food-grains, wheat, gram, &c.	25	
	Chumparun	Rice	55	
		Indian-corn	25	
		Wheat and barley	20	
Bhagulpore Division	Monghyr	Rice	50	
		Wheat	18·75	
		Indian-corn	12·50	
		Pulses	18·75	
	Bhagulpore	Rice	62·50	
		Indian-corn and marwa (a)	18·75	
		Wheat	18·75	
	Purneah	Rice	75	
		Kurti (a species of vetch or bean) (b)	16·7	
		Wheat and masuri	8·3	
	Maldah	Rice	70	
		Millet	10	
		Cold-weather crops (c)	20	

(a) Instead of "and" read "or."
(b) Add "or khesari."
(c) For "cold weather crops" read "other food-grains."

Statement showing the mean highest and lowest rates per maund of ordinary sacking and bagging Jute in the Serajgunge Bazar, 1868 to 1883.

I.

	January.		February.		March.		April.		May.		June.		July.		August.		September.		October.		November.		December.	
	Highest.	Lowest.	Highest.	Lowest.	Highest.	Lowest.	Highest.	Lowest.	Highest.	Lowest.	Highest.	Lowest.	Highest.	Lowest.	Highest.	Lowest.	Highest.	Lowest.	Highest.	Lowest.	Highest.	Lowest.	Highest.	Lowest.
	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
1868	3 1 0	3 5 0	3 3 0	3 2 0	3 2 0	2 10 0	3 2 0	3 2 0	3 4 0	3 2 0	3 4 0	3 2 0	3 1 0	3 6 0	2 12 0	3 3 0	3 4 0	3 9 0	3 3 0	3 2 0	3 6 0	3 5 0	3 9 0	2 13 0
1869	3 1 0	3 15 0	3 3 0	3 3 0	3 3 0	3 5 0	3 10 0	3 9 0	3 12 0	3 7 0	3 12 0	3 10 0	3 7 0	3 10 0	3 4 0	3 11 0	3 12 0	3 12 0	3 10 0	3 6 0	3 10 0	3 5 0	3 11 0	3 6 0
1870	3 12 0	3 3 0	3 4 0	3 3 0	3 4 0	3 6 0	3 15 0	3 6 0	3 6 0	3 4 0	3 6 0	3 4 0	3 12 0	3 6 0	3 7 0	3 5 0	3 8 0	3 7 0	3 9 0	3 4 0	3 1 0	3 3 0	3 6 0	3 6 0
1871	3 5 0	3 3 0	3 10 0	3 4 0	3 4 0	3 4 0	3 5 0	3 4 0	3 6 0	3 4 0	3 6 0	3 4 0	3 13 0	3 6 0	3 7 0	3 4 0	3 4 0	3 4 0	3 6 0	3 4 0	3 6 0	3 4 0	3 6 0	3 4 0
1872	3 4 0	3 1 0	3 10 0	3 4 0	3 4 0	3 3 0	3 5 0	3 3 0	3 6 0	3 3 0	3 6 0	3 3 0	3 13 0	3 6 0	3 7 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0
1873	3 15 0	3 1 0	3 10 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 6 0	3 3 0	3 6 0	3 3 0	3 13 0	3 6 0	3 7 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0
1874	3 15 0	3 3 0	3 5 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 6 0	3 3 0	3 6 0	3 3 0	3 13 0	3 6 0	3 7 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0
1875	3 14 0	3 3 0	3 5 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 6 0	3 3 0	3 6 0	3 3 0	3 13 0	3 6 0	3 7 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0
1876	3 17 0	3 3 0	3 5 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 6 0	3 3 0	3 6 0	3 3 0	3 13 0	3 6 0	3 7 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0
1877	3 7 0	3 3 0	3 5 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 6 0	3 3 0	3 6 0	3 3 0	3 13 0	3 6 0	3 7 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0
1878	3 12 0	3 3 0	3 5 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 6 0	3 3 0	3 6 0	3 3 0	3 13 0	3 6 0	3 7 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0
1879	3 12 0	3 3 0	3 5 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 6 0	3 3 0	3 6 0	3 3 0	3 13 0	3 6 0	3 7 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0
1880	3 12 0	3 3 0	3 5 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 6 0	3 3 0	3 6 0	3 3 0	3 13 0	3 6 0	3 7 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0
1881	3 12 0	3 3 0	3 5 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 6 0	3 3 0	3 6 0	3 3 0	3 13 0	3 6 0	3 7 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0
1882	3 12 0	3 3 0	3 5 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 6 0	3 3 0	3 6 0	3 3 0	3 13 0	3 6 0	3 7 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0
1883	3 12 0	3 3 0	3 5 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 6 0	3 3 0	3 6 0	3 3 0	3 13 0	3 6 0	3 7 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0	3 3 0

II.

Period.	Yearly average price per maund. Highest.	Lowest.
	Rs. A. P.	Rs. A. P.
1868	3 2 3	2 9 3
1869	3 11 7	3 6 1
1870	4 15 3	4 4 11
1871	4 11 2	6 14 6
1872	3 7 3	2 13 9
1873	2 8 9	1 15 9
1874	3 8 4	2 14 8
1875	3 2 11	2 11 1
1876	3 5 10	2 15 4
1877	4 3 8	3 9 3
1878	4 1 11	3 10 9
1879	3 11 9	3 2 9
1880	4 12 4	4 5 7
1881	4 1 0	3 12 6
1882	2 14 2	2 11 6
1883	3 3 11	3 1 3

III.

	Rs. A. P.	Rs. A. P.
Five years, 1868-72 ...	3 15 11	3 6 6
Ditto, 1873-77 ...	3 5 11	2 13 3
Ditto, 1878-82 ...	3 14 8	3 8 7

Memorandum of dissent by W. H. D'Oyly, Esq., *Collector of Bhagulpore.*

CHAPTER II.

Section 5 (5).—In agreeing with the majority to the modification of section 5 (5), I did so only on the understanding that the clause in question is to be retained either in its present or in a modified form. I should, however, prefer to strike out the clause altogether. I am very strongly of opinion that no ryot should be allowed to retain a right of occupancy in any land which he sub-lets, except only when he sub-lets by reason of inability to cultivate on account of age, sex, disease, accident or temporary absence from home on military or domestic service, or a pilgrimage, and when he thus sub-lets for a term not exceeding the duration of disability. My reasons are these. It is one of the avowed objects of the present legislation to improve the status of the actual cultivator, and with this view to check sub-letting as far as possible. If a ryot then holds more lands than he and his family can cultivate, why should he be allowed to become a middleman by sub-letting the portion which he and his family cannot cultivate? It has been objected to this proposal that it is too drastic, and would probably eventually lead to a destruction of all occupancy rights. I do not see why it should lead to a destruction of occupancy rights in so much of the land as each family can cultivate On the contrary, I think it would lead to a more certain fixity of tenure. No ryot would part with what is necessary for the maintenance of himself and of his family, and the knowledge that he would lose occupancy rights in the portion he sub-lets would prevent him from sub-letting what is necessary to keep. As for the rest, if he sub-lets it let him lose his occupancy rights, and let the actual cultivator acquire rights in due time. If a zemindar settles land with a ryot for cultivation, why, without the landlord's consent, should such a ryot be allowed to acquire the status of a tenure-holder against the landlord. I feel certain that such a measure as that I have proposed would simplify the law, rendering a large portion of the present Bill unnecessary. It would be fair to the zemindar and to the actual cultivator.

CHAPTER V.

Section 31 (*b*).—I disagree with the majority as to the retention of this clause in its present from. I think that the present custom of the country should not be interfered with; the custom is accepted by the ryots themselves. All the zemindars, ryots, and lawyers, who have been consulted, agree that a ryot cannot, without the permission of his landlord, make improvements of a permanent nature. He may fence, or drain, dig cutcha wells and small water-courses, and make small banks; but he may not without permission make a pucca well, a tank, bandh, or pyne, nor can he plant trees. If by the new Bill a ryot may make a tank without the consent of his landlord [see section 31 (*b*) and 87 (2*a*)], is he to be liable for the rent of the land occupied by the tank at the same rate at which he paid rent for the land before it was used for a tank? If so, then perhaps the interests of the zemindar would not be injuriously affected; but the present custom in many parts of the country is that the ryot asking for permission to dig a tank in, say, two bighas of land, pays a *salami* which is really equivalent to the capitalized value of the rent of the two bighas, and the tank having been excavated, the ryot pays no more rent for the two bighas. This is fair, and it is the custom. Why alter it? If the clause is retained, and if the ryot is to continue liable to pay rent as before for land in which a tank has been dug, how is the zemindar to recover his rent if the ryot defaults? Distrain is not possible: the zemindar is driven to his only remedy—a suit followed by sale of the ryot's jote.

CHAPTER V.

Section 31 (*f*) *and* (*g*).—Although I agree with the majority in their remarks on these two clauses, I do so only in case of the rejection of my proposal that sub-letting by an occupancy ryot should only be allowed for the reasons given in section 37 (*a*). If section 37 is struck out, the provisions of clause (*a*) of that section should be retained as containing the only permissible reasons for sub-letting. I deny that the proposal is dangerous: on the contrary, I maintain that it is the only effective safeguard to the actual cultivator.

CHAPTER V.

Section 45.—Two only of the members of the Committee could, at the time this section was under discussion, agree to any one proposal. These two proposed that clause (*b*) of section 45 should be eliminated, and that a clause should be substituted, allowing enhancement only up to one-half of the value of the proportional increase that would be arrived at by calculation according to clause (*c*).

This is of course based on the presumption that the landlord should not be the sole gainer by enhancement in direct proportion to the rise in prices, and that some allowance should be made for the increased cost of cultivation. But this argument must fall to pieces if it can be shown that the presumption on which it is based is incorrect; if it can be shown in fact that the landlord would *not* be the sole gainer by enhancement in direct proportion to the increase in prices, but that his gain would be in exactly the same proportion as the ryots after *full* allowance has been made for the increased cost of

cultivation. In short, I think I can show clearly and conclusively that the section, as it stands at present, leaving out clause (*b*) only, is absolutely fair to landlord, ryot and labourer, because it *does* allow *fully* for the increased cost of cultivation; and that therefore there is no necessity for making any *further* allowance. To begin with, it seemed to be the general opinion of the Committee that the cost of cultivation does not rise in proportion to the rise in the price of produce, but in a less degree. The price of produce has risen within the last 20 years by 100 per cent. I know as a fact that cultivators used to sell dhan (unhusked rice) at two maunds for the rupee, while recently they have been getting Re. 1 and more per maund (I leave the current exceptional year out of consideration); but labourers can still be got at two annas each per diem or eight labourers for Re. 1, whereas 20 years ago 11 to 12 labourers could be got for Re. 1; therefore the rise in the price of labour has not been in proportion to the rise in price of produce *where labourers are paid in coin*. But, as a fact, ryots who employ labourers generally pay *in kind*; therefore for the purposes of the question under discussion, we may assume that the cost of cultivation has increased in the same proportion in which the price of produce has risen. Now, to show that the provisions of section 45, eliminating clause (*b*), are absolutely fair *to all*, and that they *do* allow fully for the increased cost of cultivation, I will take the following case:—

A landlord seeks in 1885 to enhance the rate of rent at which his ryot B holds land. It is proved that in the quinquennial period, 1871-75, the average price of dhan was Re. 1 per maund, and that during that period the rate of rent was Rs. 3 per bigah of 27,225 square feet. The average price of dhan during 1880-84 has risen to Re. 1-4 per maund.

Q. What would be the fair rate of rent for 1886?

(*a*) According to section 45 (*c*) the calculation would be follows:—

R		R		Rs.		Rs.
1	:	$1\frac{1}{4}$	::	3	:	$3\frac{3}{4}$

or as Re. 1 is to Re. 1-4, so is the old rate of rent Rs. 3 to the rate to be found Rs. 3-12.

(*b*) According to the proposal made by the two members of this conference the calculation would be:—

	Rs.	A.
$3+\frac{3\frac{3}{4}-3}{2}=$	3	6

or in words, the old rent of Rs. 3 *plus* one-half of the difference between Rs. 3-12 and Rs. 3, which is equal to Rs. 3-6.

In applying the results of these two methods of calculation to the shares of the landlord A and of the ryot B in the value of the produce of one bigha of 27,225 square feet, it will be easy to see which is the fairest of the two to the landlord and ryot. For the purposes of calculation, it does not matter what the average produce of a bigha is, nor what is the actual cost of cultivation. Assuming that the former is 10 maunds, and that the latter is one-third of the gross value of the produce, we get the following results:—

			Rs.	A.
In 1871-75, 10 maunds at Re. 1	...	...	=10	0
In 1880-84, 10 maunds at Re. 1-4	...	...	=12	8

The proportion in which the value of the produce is divided between the landlord, the ryot, and the labourer by the two methods of calculation is shown in the following tables:—

First according to Section 45 (c), i e., in direct proportion to the rise in price of produce.

Year.	Gross value of produce.	Cost of cultivation, *i.e.*, the labourer's share.	Rent, *i.e.*, the landlord's share.	Balance, *i.e.*, the cultivator's share.
	Rs.	Rs.	Rs.	Rs.
1871-75	10	$3\frac{1}{3}$	3	$3\frac{2}{3}$
1880-84	$12\frac{1}{2}$	$4\frac{1}{6}$	$3\frac{3}{4}$	$4\frac{7}{12}$

Thus by this method it will be seen that by raising the rent from Rs. 3 to Rs. 3-12, *i e.*, in direct proportion to the rise in price of produce, *full* allowance is made for the increased cost of cultivation, and the ryot, the labourer, and the landlord profit in the same proportion.

Second, by the method (b), i.e., according to the proposal made by two Members of the Committee

Year.	Gross value of produce.	Cost of cultivation, *i.e.*, the labourer's share.	Rent, *i.e.*, the landlord's share.	Balance, *i.e.*, the ryot's share.
	Rs.	Rs.	Rs.	Rs.
1871-75	10	$3\frac{1}{3}$	3	$3\frac{2}{3}$
1880-84	$12\frac{1}{2}$	$4\frac{1}{6}$	$3\frac{3}{8}$	$4\frac{23}{24}$

It will thus be seen that by this method, after making the same *full* allowance for the increased cost of cultivation, the ryot gets an undue share of the value of the produce, while the landlord gets less than a fair proportion.

In short, section 45 (*c*) *does* allow for increased cost of cultivation, and therefore it would be unfair to make any *further* allowance. There is no fallacy in this, whereas there is a fallacy in the opposite argument in presuming that section 45 (*c*) gives the zemindar the *whole* of the increase secured by a rise in the price of produce, for in fact that section gives him only his fair proportion of the increased value. I would therefore leave the section as it is, eliminating only clause (*b*) for this reason: that if by any chance the calculation under clause (*c*) would result in an enhancement of more than four annas in the rupee, the court has the power under section 49 to order progressive enhancement. It might be advisable to substitute for clause (*b*) a clause making it compulsory on a court, in cases where the enhancement under 45 (*c*) would exceed four annas in the rupee, to order progressive enhancement. I am sure that this will be found to be fairer to the landlord than clause (*b*) in the present Bill would be, while it will not be by any means unfair to the ryot.

CHAPTER V.

Section 47 (*b*).—In this case, for the same reasons as those given above, I think clause (*b*) is unnecessary; section 49 will sufficiently protect the ryot, while 47 (*b*) will be unnecessarily hard on the landlord.

CHAPTER IX.

Managers.—I think it very necessary that managers should be restricted by special enactment from either raising or lowering rates of rent, more especially from lowering them without the express consent of all the proprietors or of the court.

CHAPTER XIII.

Distraint.—The majority of the Committee would exclude occupancy ryots from liability to the provisions for distraint, because the landlord has the remedy of sale of occupancy holdings. In this I entirely disagree with the majority of the Committee. Why should a landlord be forced to sell without the option of exercising the more merciful remedy of distraint. I do not believe for a moment that the defaulting ryot would always be able to save his holding from sale. How is it so many sales have already occurred even before transfer has been legalized? Let the landlord at least have the power to recover without recourse to the sale laws. One member of the Committee, I understand, proposes the cumbrous procedure of the Bill in the case of occupancy ryots, and the simpler procedure recommended by the Committee in the case of non-occupancy ryots. I would not advocate different systems for the two classes; what is fair for one is fair for the other. I would extend the simple procedure recommended by the Committee to the cases of *all* ryots alike.

If occupancy ryots are to be exempted from liability, then, when the time so ardently wished for has arrived, when nearly every ryot shall have acquired a right of occupancy, the chapter conferring powers to distrain will become almost a dead-letter; it would apply only in the very few cases where rights of occupancy had not been acquired.

Dissent by Mr. Weekes, *Collector of Purneah.*

Price-lists and rise in prices.—I do not think it safe to lay the price-lists obtained for each subdivision in their crude state before the civil court. Many corrections and allowances must be made for bad seasons and famines in Bengal and the rest of India respectively; and other abnormal and accidental changes must be eliminated before the table can present the true rise in prices. The conditions of India are exceptional in this respect; where fluctuations are both great and sudden, my idea is that no account need be had of each petty market rate in such a general and widespread matter as the rise in prices, which might probably be tabulated with approximate accuracy for the whole of Bengal from the prices to be found in the books of merchants in Calcutta, as in London for England. The merchant offices could supply the tables which would give the proportionate increase in the price of rice for all Bengal. Suppose, for example, that in A. D. 1700 paddy sold in Calcutta at 100 seers per rupee and sells now at 25, thus we have a fourfold increase, and if the price of paddy at Raneegunge in this district be now found to be one maund per rupee, it is a fair inference, I think, that the price in Raneegunge in 1700 was four maunds per rupee. On the other hand, it may be that railways have made the difference between the price to-day at Calcutta and at Raneegunge less than it was in 1700, but I think not, as the only communication between the places now as it was then is by water. The safer plan no doubt might be to have a separate table of the rise in prices for each district, but in my opinion price-lists for all Bengal should be examined and the rise reduced. This examination would test the accuracy of the different lists and correct possible errors, and I believe would show pretty much the same increase for the whole province. The variations would be due to intermediate change in communications, the opening of new railways, roads, &c. It is merely the change in the purchasing power of silver measured in grain.

As regards the enhancement of rent in consequence of the rise, I think the rent must be raised in exact proportion with the rise in the value of the landlord's share of the produce, or, in other words, the diminution in the value of silver. If the price of rice is doubled, the rent ought to be doubled.

The prices to be ascertained are the wholesale prices of paddy, &c., those being as near as possible to, though somewhat dearer than, the prices obtained by cultivators. But considering that rise in prices is to a great extent caused by increase in the population that produce food-grains, it seems rather hard that the landlord should be recouped for the whole of the loss that he would otherwise suffer, while the producers, who are increased in number, only receive about the same amount of grain as before.

Certainly, however, in calculating the enhanced rent, all previous enhancement on other ground should be deducted from the enhancement to be made on the score of rise in prices. I would note that the headings in the table at the end of the Secretary, Government of Bengal's letter are incorrect. The total of only the "principal food-grains" cannot equal the total food-supply. But this does not signify. The proportions given, of course, include all food-grains.

MEMORANDUM OF DISSENT ON CHAPTER XIII.

Distraint.—I voted yesterday with the majority in favour of freeing occupancy ryots from distraint; but shortly afterwards, when it was too late, wished to propose an amendment to the effect that it seemed impolitic and undesirable to completely take away from the zemindars the power of distraint (for which there was the sanction of old custom) even in the case of occupancy ryots, although it is true that the zemindar's rights would be eventually sufficiently secured by the power to sell the right of occupancy and even to eject for arrears if that proposal be sanctioned.

It seems to me that the crops should always be considered hypothecated for the payment of rent, and to destroy the right to distrain would be to allow a money-lender's claim to step in before that of the zemindar, and to risk the former being satisfied to the prejudice of the latter. The Government, in its own interests, should be extremely jealous of any infringement of the hypothecation for rent principle.

What I propose is that the somewhat cumbrous and guarded distraint procedure of the present Bill be declared applicable to distraint on occupancy ryots, and that the more speedy distraint procedure of Act X, 1859, with a mere notice to the civil court, be followed in the only cases in which the zemindars foretell difficulty, and where I too apprehend difficulty, viz. the case of non-settled ryots on border and dearah lands. I acknowledge there is a difficulty in these cases which does not exist in the case of occupancy ryots.

CHAPTER XVI.

Patni tenures Sale Law.—My objection to this chapter is the same as that of the late Hon'ble Kristodas Pal. All change is in itself an evil so far as legislation is concerned (though the contrary opinion would seem to prevail in some quarters), and this maxim is all the more cogent, whereas in this case little or no alteration in the law is intended. The zemindars object to the incorporation of the patni law into this Bill; and on the principle of letting well alone the old Regulation should stand as it is. It belongs as a matter of history to the year 1819, not 1884.

Dissent on subject of ejectment for arrears of occupancy ryots.—I consider that, while ejectment may be necessary in many cases, which, though numerous, are somewhat exceptional, yet the procedure approved of by the majority in accordance with the view of the Manager of the Chanchal Estate, that an occupancy ryot shall be liable to be at once ejected without the right to claim a sale of his occupancy rights, unless he shall first pay up the arrear due, does not at all approve itself to my mind as either just or reasonable. The occupancy ryot has by custom a right to have his rights sold. This proves that the denial of the right is unjust, and it is unreasonable, as whatis the use of his claiming a sale after he has paid the arrears for which his rights are to be sold?

Why not put up for sale his rights, and in case one year's rent be not fetched, stop sale proceedings and eject him?

Besides, the procedure is utterly unsuited to the conditions that generally prevail, viz. that the right of occupancy will sell at least for one year's rent. I am not, however, against ejectment when these conditions are found not to exist.

C. E. G.—Reg. No. 5429C—327—16-8-84.

No. 1893R, dated Bhagulpore, the 16th August 1884.

From—G. N. Barlow, Esq., c.s.i., Commissioner of the Bhagulpore Division and Sonthal Pergunnahs,

To—The Secretary to the Government of Bengal, Revenue Department.

In continuation of this office No. 1836R of the 12th instant, I have the honour to forward herewith a memorandum of dissent from the Collector of Maldah on the provisions of the Bengal Revised Tenancy Bill.

From the Collector of Maldah, Bhagulpore Division.

Memorandum of certain points regarding the *report* of the proceedings of the Bhagulpore Division Committee which met on the 4th, 5th, 6th, 7th, and 8th of August 1884 at Bhagulpore to consider and report on the provisions of the *Bengal* [*Revised*] *Tenancy Bill*, 1884.

Bengal Government letter, paragraph 4.

CHAPTER V.

SECTION 37.

Report.

The majority of us (Porch dissenting) think that it will actually encourage the system. The liability to summary sale will have no terrors for the subletting money-lender or occupancy ryot, who will usually be able to pay up their rents without difficulty.

Memorandum.

I do not agree with this. This provision of the law will at least secure the interest of "*actual cultivators*," who would but for this provision be ryots without right of occupancy, as ryots holding under an "occupancy ryot" cannot acquire a right of occupancy in accordance with the principle of the Bill.

Bengal Government letter, paragraph 5.

CHAPTER III.

SECTION 8.

It is reported from Maldah district that amongst the tenureholders under the Act will be found persons who pay only 2 to 4 annas per bigha, while they sublet at from 12 to 14 annas. The section has a tendency to work in favour of hard and rapacious landlords and against those who have been lenient.

Notwithstanding what has been stated here, I am of opinion that this section should be retained in general equity as a protection against undue enhancement of rents of tenures, and to secure the position of the tenureholder to such extent as seems fair, and to inculcate moderation in the treatment of this class of the landed interest as to enhancement of rents.

Bengal Government letter, paragraph 6.

CHAPTER VIII.

SECTION 64(2).

The majority of us (Barlow, D'Oyly, Weekes) are for enacting that the presumption shall not continue to run after the passing of the new Act.

I concur with the majority as to enacting that the presumption *shall not continue* to run after the passing of the new Act.

Bengal Government letter, paragraph 7.

CHAPTER V.

SECTION 25.

The majority of us (Porch dissenting) are in favour of striking out the words "or estate" in this and the following section. We believe that the acquisition of occupancy rights under the Act by a ryot in the village where he resides will meet the requirements of the case. The arrangement will be most in keeping with former customs and will avoid difficulties and objections, and be understood by the people.

It was considered by me that the extending of the right over the entire estate is objectionable, and it was proposed *in my note* that the right should be limited to the estate or portion of estate lying within the jurisdiction of a sub-division or munsifi only. The principle of the two amendments is the same If the amendment of the conference is adopted, the mere striking out the words "*or estate*" in this section (and other sections) will not do, as there are often lands of two or three estates situated in a single village, and a settled ryot of any one of these estates cannot have the right over lands of other estates lying in the same village. To remedy this, a proviso will have to be added that the right will in no case extend beyond the limits of the estate of which he is a settled ryot.

Bengal Government letter, paragraph 8.

CHAPTER V.

SECTION 31, CLAUSES *f* AND *g*.

Report.

We think that the mention of subletting as one of the incidents of an occupancy holding is a mistake, and therefore clause* *g* should be omitted: elsewhere the notice of subletting in the law should merely be the imposition of restrictions in cases where subletting takes place. † The restriction which the majority (D'Oyly dissenting) would impose is that in cases of subletting by ryots holding at fixed rates or by occupancy ryots, the sublessee shall at once acquire a right of occupancy in the land subleased as against the lessor.

The proviso section 37 (*a*) should be preserved in this connection to meet cases of hardship.

Even with the above restriction imposed, there is still so much uncertainty as to how far the operations of the law will be effectual in practice that *we think the proposal for legalising general transfer of an occupancy holding should*‡ *be given up* (PORCH DISSENTING). The custom of transfer may be widespread, but it certainly is not universal. There seems to be no necessity to force matters. When it is found that the provisions of the new law are securing their object, and the position of tenants has grown stronger, it will be easy to give the further right of free sale.

In accordance with these remarks we think that clause *f* should be modified, and a transfer of an occupancy holding by sale only be allowed for its own arrears, and clause *g* should be struck out. Restrictions upon subletting to be separately imposed.

Memorandum.

* This would no doubt be a considerable check to the system of subletting, but the omission of the clause altogether will take from the occupancy ryots a right which they have all along been exercising, and will operate rather hardly against them. It is doubtful again how far this restriction will be workable. This is in fact going to an extreme. It is for the purpose of sanctioning larger privileges of the occupancy ryot that this Act was set on foot, otherwise everything can be set at rest by declaring occupancy rights not to be saleable at all, but merely *heritable*, as under the existing law. I am against the omission of clause *g*.

† This will again conflict with the general principle of the law, viz. that a ryot holding under an occupancy ryot cannot acquire a right of occupancy, unless the subletting ryot be transformed into a middleman or tenureholder, and this was presumed by me in accordance with my assent to this latter restriction.

‡ THIS IS OPPOSED TO THE VERY SPIRIT AND PRINCIPLE OF THE PRESENT BILL AS ALREADY NOTICED, AND IS A DEPLORABLE STEP BACKWARDS.

This gives no new or improved status to the occupancy ryot, and the occupancy holding HAS BEEN GENERALLY SO SALEABLE ALL ALONG. *On the contrary, by these proposals the existing privileges of occupancy ryots are to be curtailed. The safeguard proposed in my reply to paragraph* 8 *was more in accord with the principle and spirit of the proposed law, and is stated hereafter.*

"It is known that the lower classes of the people are generally improvident, and would readily incur debt if they could get any one to lend them money. To make the ryot's occupancy right saleable for the ryot's debt would give the ryot an additional facility and temptation to become indebted. In this way the occupancy right without some restriction of transfer may largely and easily pass into the hands of money-lenders and speculators, who, it is feared, will rack-rent the land. To guard against this predicament, it may, in addition to the restrictions contained in the present Bill, be provided (1) that *the occupancy right shall not be saleable for the ryot's debts;* and (2) that *on the right passing into the hands of any transferree, if he is not an* "ACTUAL CULTIVATOR" or *found not to be carrying on cultivation by means of servants of at least half the area of the purchased occupancy holding, the transfer should be*

Report.

Memorandum.

declared void at the instance of the zemindar at any time within a year of the purchase. It seems, however, to be difficult, or indeed impossible, to suggest any plan that will be a sure and certain check on the danger apprehended, and at the same time free from all objection. It is obvious that such danger must be concomitant to the provision declaring the occupancy right saleable, and the danger will be greater in proportion to the unrestricted nature of the sale. It should therefore be also enacted (1) that THE OCCUPANCY HOLDING SHALL NOT BE SALEABLE FOR THE RYOT'S DEBTS; (2) and that *no sale of a ryotti occupancy holding to any one, except an actual cultivator ryot, should take place or become valid, without the landlord's consent, and any such transfer should be liable to be set aside at the landlord's instance within one year from the date of such transfer. Further, the exclusion or extension of this incident of the right of occupancy,* viz. TRANSFERABILITY *should be made permissive and depending on the discretion of the local Government to exclude the operation of this clause from, or extend the operation of this clause, to any village, estate, pergunnah, munsifi, thana, district or other division of the country according as may be found proper with regard to the solvency, independence, and enlightenment of the ryots,* viz. *to exclude the operation of the provisions of the law as to transferablity of the occupancy holding from any tract in which it may be found by the local Government to be temporarily undesirable as to operation, and again to extend the same to such tract whenever it may be found expedient by an order of Government* locally notified and published in the *Calcutta Gazette as usual.*

Bengal Government letter, paragraph 9.

The abolition of the "PREVAILING RATE" from the Statute Book will go very hard against the landlord. There may not be a readily ascertainable "PREVAILING RATE" in existence over some large tract of the district, and if for some reason or other the occupancy ryots of one or two villages, pay at higher rates than in neighbouring villages the zemindars of the neighbouring villages sometimes come down upon their ryots for enhancement on this ground principally. This rule as to enhancement, however, has apparently scarcely ever been abused by any of the zemindars of this district, as is evidenced by the paucity of such suits; but here land is in excess and more ryots are wanted. The onus of proof will be on the zemindar, and unless he can satisfy the court by clear tangible proof, he will have no chance of succeeding in his suit. The difficulties in the way of enhancement of the rent of occupancy ryots by suits are so many that the further curtailing of the existing grounds of enhancement seem to be unreasonable and unjust, and therefore bad in tendency. Zemindars, especially those who are powerful and unscrupulous, and therefore dangerous under such circumstances, may be tempted to try unfair means of putting pressure on the unwary ryot, and thus get the ryot to submit to unjustifiable enhancement by private agreement under pressure.

Bengal Government letter, paragraph 10.

Considering the general circumstances of the ryots, and the manner in which they are frequently deceived by the zemindars and their

Report.

Memorandum.

servants, it is desirable that there should be a difference between the extent of enhancement in court and out of court. The necessity for such difference exists, and the Legislature should lay down such difference as may seem reasonable and just and suitable under the circumstances.

Bengal Government letter, paragraph 12.

CHAPTER XVII.

SECTION 216.

If protection in the way proposed is granted to the cultivating holder of bastu lands. some provision against sub-letting of homestead lands will be required, for at the time of settling a new village, when land is cheap, ryots take up more than they want for their own requirement in the most favoured situations. By and bye when pressure begins, they are apt to sublet their surplus lands in the centre of the village, thus injuring (1) the zemindar by competition, and (2) the villagers by running up the rates, and (3) both parties in cases where the village site above flood level is limited in extent by occupying lands required for ryots, who take up the new lands when a tenant sublets bastu land. The majority (Barlow, Porch, and Weekes) consider that the zemindar should be allowed to recover from him the amount at which the land is sublet less 5 per cent.

This may do and may guard against such sub-letting; but on further consideration it appears to me to be inequitable and opposed to the principle of the Bill, whether the bastu land is part of an occupancy holding or otherwise. I THEREFORE NOW WITHDRAW MY ASSENT TO THIS PROPOSAL. *After a ryot has paid rent for years for a holding, he should not be interfered with as long as he pays the proper customary rent for the same, whether he sublets or not.*

There is no well defined or acknowledged custom regarding the bastu lands which do not form part of any holding. The general belief is that such holders are not liable to eviction and such holdings are transferable, but may be subjected to enhancement on the ground of the prevailing rate of rent for such lands in the neighbourhood being higher than the rate paid. *It does not appear to be safe to leave so important a matter to be regulated by custom when that custom is so vague and ill-defined.* It often gives an unscrupulous landlord full opportunity to worry the tenant by suing him for ejectment, in which he may at times succeed, or to realise from him an illegal nazar by threatening so to sue him. *With regard to bastu lands which are not part of any holding,* PROVISION SHOULD THEREFORE BE MADE *so as to render the tenant not liable to eviction. except on breach of any condition, the breach of which is expressly laid down in writing as rendering him liable to eviction, and that enhancement of the rates of rent of such lands should not be granted, except when they are under the prevailing rates for bastu lands of the neighbourhood or when a written contract, to be duly registered, is voluntarily executed by the tenant accepting the enhancement.* IN NO CASE, *however, should the enhanced rent exceed the previous rent by more than 50 per cent., and further that no second enhancement will be claimable within 15 years.* The mere custom will not, as already mentioned, sufficiently protect the ryot in such cases, and it is not an easy matter to prove such custom. WITH REGARD TO HOMESTEAD LANDS FORMING PART OF ANY HOLDING *the same conditions regulate the homestead land as the remaining lands of the holding. When a ryot is ejected from, or otherwise parts with, his agricultural holding, he is ordinarily permitted to retain possession of his homestead lands on the conditions that are in each case come to between him and his landlord.* THIS CONFUSED STATE OF THINGS SHOULD BE PUT AN END TO BY LEGISLATION. *It should be laid down that* ANY SUCH RYOT SHOULD NOT BE DISTURBED IN THE POSSESSION OF

Report.

(*g*) The majority (Porch dissenting) consider that with the exception of jute there is no other crop in this division, the area of cultivation of which can be supposed to vary with the prices of staple food grain.

Memorandum.

SUCH BASTU OR HOMESTEAD LAND AS LONG AS HE AGREES TO PAY A FAIR AND EQUITABLE RENT ACCORDING TO THE PREVAILING RATES OF THE NEIGHBOURHOOD FOR SUCH LANDS.

In the Turtipur indigo concern (Messrs. Jardine, Skinner & Co.) it is seen that when paddy cultivation becomes unprofitable from low prices of paddy numbers of ryots come and offer to sow their paddy lands, which are suitable for indigo cultivation, with indigo, on the customary terms as to advances and delivery of plant to the indigo manufacturer.

Bengal Government letter, paragraph 18.

CHAPTER VIII.

SECTION 70.

To effect this it has been suggested that every zemindar should be bound to keep in register a village map shewing the numbers of all fields, which numbers should correspond with those exhibited in the receipts. The idea is well worthy of consideration.

But the expenses of this will be large, and zemindars will derive no benefit by keeping such records. They and their servants will therefore naturally try to raise the cost of this and something in excess from the ryots. In fairness some portion of it should be borne by the ryots, and the proportion should be legally fixed, in order to put some check on the customary extortion.

Bengal Government letter, paragraph 20.

CHAPTER IX.

SECTION 96.

We think clause 3 should be struck out, and the matter left to be dealt with under the Specific Relief Act.

I would observe here that there is no harm in retaining this clause, and thus making this Act complete in itself

Section 96 of the Bill, dealing with the abandonment of holdings, seems, as pointed out by the Government of India, to be the fairest way of dealing with the conflicting interest of landlord and tenant in such cases. The danger pointed out does not seem to be so enormous as represented. If the ryot be illegally ejected under this section, he may have his remedy in court. If he would not seek such redress, no amount of law-making will be able to give him an effective protection. Under the existing practice the land of the deserter is resumed by the zemindar immediately after desertion, and the deserter never again comes to reassert his claim. Now, however, no new ryot will agree to take the land of the deserter until the expiry of the period prescribed by clause 3. The zemindar may thus have to suffer, or he may be compelled to settle the land temporarily at a rate lower than the fair rate of the land. The provision is not therefore a thoroughly equitable one, but it is merely a compromise in which both the tenant and the landlord have to make some concession. In view of the difficulties of the zemindar as pointed out, and the loss of rent to which he may be subjected in consequence of the provision of clause 3 of this section, it is held by many that two years' limitation is rather too long; but considering all the

Report.

Memorandum.

circumstances, I think two years' limitation may be allowed to stand. The newly settled ryot will also be under the risk of being driven out at any moment within two years—an inconvenience which is not inconsiderable.

Bengal Government letter, paragraph 24.

CHAPTERS XI AND XII.

The preparation of a table of rates in the manner prescribed will be a very difficult matter, and trained officers will be required for the work.

There will no doubt be difficulty, but where the difficulty can be overcome and a proper table prepared it will do much good and operate widely to advantage. I would here draw attention to what has been generally admitted at this conference regarding prevailing rates in the remarks on Bengal Government letter, paragraph 9, of the Bhagulpore conference report of August 1884.

Bengal Government letter, paragraph 25.

CHAPTER XIII.

The majority (D'Oyly and Kean dissenting) think that if the provisions of the law for securing the payment of rent, whether by sale or under the penalty of eviction, be made effectual in other cases, it would meet the objections, if the distraint procedure was limited to the case of non-occupancy and other subordinate ryots.

We unanimously consider the following arrangement worthy of notice, which would leave the power of making distraint in the hands of the landholders as at present, and at the same time furnish a check upon abuses

At the time of distraint the defaulter should be furnished with an account shewing (1) area and boundaries of the holding for rent of which distraint is made; (2) rate and amount of rental, the latter divided into arrear and current in order to prevent the money realized being credited to previous arrears as is often done; (3) the portion of the holding the crop of which is distrained to meet the demand, for in a large holding the whole crop should not be distrained. A duplicate of this account should be despatched at the same time by the distrainer to the court having jurisdiction, and he should further be bound to intimate subsequently to the court when the demand has been satisfied or arrangements have been made with the defaulter.

I was in favour of distraint by court, and I still think that to be the safest and most proper course for the following reasons:—

"The provisions of this chapter requiring distraint to be exercised through court only is a decided improvement on the present law, as the power of distraint is often abused by the zemindars. Such abuses are within the power of the executive to suppress, but it can give no redress in cases not brought to its notice, and such cases are seldom brought to notice. I do not see much force in the arguments adduced by the landlords. If they make timely application they can have no reason to be losers even as respects non-occupancy ryots in border districts and chur lands. If the crop is distrained a few days before it becomes actually fit for harvest, there can be no difficulty. The success of these provisions will depend greatly on the promptness with which applications for distraint are disposed of by the court.

R. PORCH,
Collector.

MALDAH,
The 12th August 1884.

J. E. S —Reg No. 5607C—327—19 8 84

No. 480, dated Chinsurah, the 8th August 1884.

From—JOHN BEAMES, ESQ., Commissioner of the Burdwan Division,

To—The Secretary to the Government of Bengal, Revenue Department.

IN reply to your Circular No. 3T—R and connected correspondence, I have the honour to report on the Bengal Tenancy Bill.

2. The instructions contained in paragraph 1 of your letter contemplate that a conference shall be held, to which each officer shall bring notes of his views, and after comparing and discussing these, a report shall be drawn up embodying, not my opinion only, or that of the officers under me, but the general conclusions arrived at. This procedure is intended to secure a consensus of opinion in each division.

3. I beg to point out that most Collectors have for long time past had no practical experience of the majority of the questions involved, as the trial of rent suits was transferred to the civil courts fifteen years ago. I and the Collectors of Hooghly and Beerbhoom have, it is true, served in Orissa, where rent suits are still tried by Revenue officers; but I ceased to be a Collector in that province six years ago, and the Collectors left it even before that, so that our recollections in matters of detail are somewhat rusty.

4. Under these circumstances, I felt that it was not probable that any of the officers in this division would be in position to speak from personal knowledge on most of the points raised. If they come to the conference to discuss the Bill, section by section and chapter by chapter, they would be kept away from their districts a long time, and the ordinary work of the division would be seriously interfered with. To avoid this inconvenience, I called on the Collectors to submit their views in the first instance in the shape of a report. I then carefully collected all these reports and drew up this report on those points about which we all agreed, leaving for the conference only those points on which there was a difference of opinion. At the conference the points we fully discussed.

5. In the following pages, therefore, it should be understood that whenever I give an opinion as my own, without any mention of the conference, the point is one concerning which I and my Collectors agree, or one on which they have offered no opinion. Particular suggestions are given in the name of the officer from whom they emanated, and in respect of the points discussed at the conference, the opinion of the majority is recorded. With this preliminary explanation, I proceed to report on the various points *seriatim*.

CHAPTER I.

6. Certain suggestions regarding the definitions in section 3 of the Bill will be more conveniently considered in the next paragraph.

CHAPTER II.

7. The first question is whether the definition of ryot in section 5 (3) covers all classes of ryots. We are all agreed that it does not. There are in many parts of this division persons called "aymadars," who hold land free of revenue on grants made by the Supreme power before the commencement of British rule. These men are not "proprietors" as defined in section 3 (2), because they do not own an "estate." An "estate," by section 3 (1), includes only land registered under the Land Registration Act, whether revenue-paying or revenue-free; but the tenants of aymadars are undoubtedly ryots, and the definition should be widened so as to include them.

8. Again, there is the case of ryots cultivating alluvial lands (churs) which have accreted to the estate of a riparian proprietor. Under Act IX of 1847, no settlement of these lands can be made with the proprietor till a general survey has been made, and as this can only take place once in ten years, the alluvion is left unassessed and unregistered in the Collector's books, and the Government Pleader of Hooghly suggests that, as the definition now stands, it might fairly be contended that the tenants on these lands are not ryots in the sense of clause 3, section 5, during the time the land remains unsurveyed and unassessed

9. Then there are the "mandals" and "aymadars" of Midnapore. These men belong to that large class (referred to in paragraph 32 of Mr. Cotton's memorandum on land tenures in Bengal) to whom tenures were granted for the purpose of reclaiming jungle. As the Collector of Midnapore points out, it can hardly be said that a man who some generations back took land for the purpose of breaking up the jungle and settling cultivators thereon is one who, in the words of section 5 (1), "acquired the right to collect rents." What he acquired at the outset was land from which no rents were leviable, as it was all waste. In process of time, no doubt, the right to receive rents grew up out of the successful effort to settle cultivators; but that right was a growth subsequent to the period of acquisition, and not the actual right transferred at the moment of acquisition

10. This is a point of the highest importance for the Midnapore district, because, unless the mandal or aymadar be recognized as a tenure-holder, many thousands of hereditary cultivators, who in equity should be considered occupancy ryots, will, under the provisions of the Bill, become mere tenants-at-will. There should therefore be added after the words "to collect rents" in clause 1 of section 5 and in clause 4 (*c*) of the same section the words "or to bring waste land under cultivation by establishing tenants on it." Also with reference to the Hooghly and Burdwan aymadars, and to the cultivators of unsettled alluvial accretions above referred to, some alteration is required in the terms of section 3, clause 1.

11. In respect of lakhirajdars who are not registered, we think that, if they suffer any injury from not being registered, it is their own fault, and they have the easy remedy of applying for registration. It is, however, doubtful whether the definition, as it stands, will cover the ryots on estates the property of Government, and held under direct management: some provision should be made for this class of estates. The Collector of Bankoora recommends compulsory registration, but was not prepared to say how he would proceed to enforce it. The suggestion did not strike the other officers present as feasible.

12 The next question is as to the fairness of the presumption in section 5 (5). The Collector of Midnapore considers that, instead of establishing a presumption based on area, it would be better to provide that when a tenant receives from under-tenants rents equal to what he has to pay to the zemindar, he shall, until the contrary is proved, be assumed to be a tenure-holder. But many other gentlemen whom I have consulted consider that the provision in this section is very arbitrary, and that it is neither necessary nor fair. The reports of the Collectors are, however, very brief on this point, and it will be better to consider it in connection with the next point. I will merely say here that, if a tenant who holds 101 bighas can turn himself into a tenure-holder by sub-letting one bigha, he will undoubtedly do so. The creation of a tenure is an act for which a zemindar in the present day gets a large sum of money in the shape of *salami* or bonus, and it is not surprising that zemindars should resent a measure which would deprive them of a legitimate source of income, which at the same time weakens their hold over their estates by allowing tenures to be created at will by a large proportion of their tenants.

13. But if it is a hardship that the holder of a jote of more than 100 bighas should be able to turn himself into a tenure-holder by sub-letting a minute fraction of his holding, it is a still greater hardship that, under section 37, the occupancy ryot should be able to attain that status by sub-letting half his holding. It is true that he will have to register the transaction, but the Collector of Hooghly, who considers this section a "dangerous innovation," points out that practical difficulties in registering such tenures would be nearly insuperable. There is no doubt that, as soon as the ryots come to understand the provisions of the law, they would avail themselves of it very largely, and that an amount of sub-letting would take place which would seriously embarrass zemindars and change the whole features of the landed property of Bengal.

14. As to keeping out the money-lender, it seems that the provisions of section 37 would not have that effect. So long as the ryot is improvident, he will have recourse to the mahajan, and if you deteriorate the value of the only security the ryot has to give for loans, namely his holding, the money-lender will raise his terms, and the ryot will be more rapidly impoverished than now. You will not prevent the ryot from borrowing; no law will do that; you will only make it harder for him to get money, and throw him more rapidly and more deeply into the clutches of the man you profess to wish to save him from.

15. But, after all, why resort to legislation of this type, which reminds one of the middle ages, and its invidious prescriptions of Jews, foreign merchants and the like? If it is desired to keep out the money-lender because he is an exacting landlord, it is open to Government to make laws limiting the power of landlords of all classes to extort and exact. I see very little in this Bill to check the exaction of illegal cesses, though in my opinion this is a far more important matter than all the subjects treated of in the Bill put together. The provisions of section 86 will be inoperative: no ryot could continue to live on an estate after subjecting his zemindar to a heavy fine. He would have made the place too hot to hold him. I will refer to this point again when discussing Chapter VIII.

16. The fact that the money-lender, if he purchases an occupancy right, will be subject to the summary procedure of the Putni Sale Law, or something similar, will, as the Collector of Burdwan points out, have no terrors for him, as he is *ex hypothesi* a man with lots of money who is never likely to fall into arrears.

17. Most of the Collectors affirm, from their own experience, that money-lenders in Bengal at least, whatever they may be in Behar, are not harsher to their ryots than other people, and that they certainly do more than others to improve their land. My own opinion is very much in accord with this view. It must also be borne in mind that in many parts of Bengal, especially of this division, it is difficult to draw a distinction between a money-lender and an ordinary ryot. Any ryot who saves a little money—and there are many who do so—lends it in small sums to his neighbours, so that almost every well-to-do ryot is a money-lender, and it does not seem advisable to deter men of this class from purchasing occupancy rights. Occupancy rights are already in most parts of Bengal freely transferred, and, looking to the slowness with which any new enactment penetrates into the minds of the ordinary ryot, I have no doubt that this Bill, if it becomes law in anything like its present shape, will not affect the popular practice to any perceptible degree for many years to come.

18. Another point is that mentioned in paragraph 27 of the Select Committee's report, and paragraph 6 of the Government of India's letter—the difficulty of finding out when a ryot has sub-let half his holding. This I conceive to be insuperable. People come to our courts when it pleases them, and if it is no one's interest to come, we cannot make them do so. It is certainly not the interest of the zemindar to bring the fact to the notice of the authorities, nor is it the interest of the purchaser, and these two between them are quite able to persuade or intimidate the ryot into keeping quiet.

19 The convertible tenure-holder is a creation of this Bill, and does not find any favour in the eyes of the officers present at the conference. They do not see that there is any necessity for him, and the whole procedure is an encroachment on the rights of zemindars.

CHAPTER III.

20. As to deciding what holdings are and what are not tenures, the provisions of section 5(4) supply all that is necessary, giving the courts ample discretion in cases of doubt. Some Collectors have pointed out that there will be considerable doubt as to the purpose for which a holding was originally acquired, especially in the case of holdings of very ancient date, of which there are many.

21. The privileges granted by the Bill to tenure-holders are a direct encouragement to sub-letting, as by that process an enormous proportion of ryots will be able to turn themselves into tenure-holders. I do not see why enhancement, if allowed at all, should not take effect at once. I still adhere to the objection which I have all along expressed to the provision in section 9 for gradual enhancement, and I see no reason why the tenure-holder should be liable to fresh enhancement every ten years (section 10), while the occupancy ryot is so liable only once in 15 years [section 50(1)].

22. In Midnapore tenures, as far as the Collector can learn, are not subjected to enhancement, though intermediate tenants, who would under this Bill be classed as tenure-holders, have been hitherto regarded as occupancy ryots and subjected to enhancement. In Bankoora it is stated that there are no enhanceable tenures. This seems rather a sweeping statement, but it is probably perfectly true that in that, as in all other districts, enhancement suits against tenure-holders are almost unknown. It is consequently impossible to carry out the suggestion in your 5th paragraph, that the effect of this chapter should be considered with reference to actual or probable enhancements of this kind.

23. Regarding section 8, there seems to be no reason for protecting tenure-holders to the same extent as ryots, and I may add that, if the "convertible tenure-holder" becomes a reality, there is every reason, in the interests of the zemindar, that the tenure-holder's position should not be made too favourable. I, however, agree with the Collector of Midnapore in thinking that the provisions of section 48 should be made applicable to the case of enhancement of tenure-holders' rents.

CHAPTER IV.

24. The point for discussion appears to be whether, by extending to the class of ryots holding at fixed rates the 20 years' presumption rule of section 64 (2) of the Bill, any unfairness will be shown to the zemindar or the auction purchaser.

25. I do not see why this class of ryots should be assimilated to tenure-holders. The Collector of Burdwan would assimilate them to occupancy ryots, and this is, I think, the category under which they most naturally fall. The other Collectors have not expressed any opinion on this point.

26. As to the question of the 20 years' presumption, it is generally admitted that the presumption is favourable to the ryots and adverse to the zemindar. In such a case as this I feel, and have always felt, that it is an error to suppose that Government is free to legislate as it may think best. Government is only at liberty to make enactments for the improvement of the ryot's position up to the point where such improvement would make the position of the zemindar worse than it was under the Permanent Settlement. When that point is reached, Government is bound to stop—bound by the pledges given by the Government of 1793, which cannot fairly be over looked. Of course Government is well aware of this, and has no intention of overriding the Permanent Settlement; but there are cases perhaps in which the ultimate effect of the provisions of this Bill in that direction may not be accurately foreseen, and it is therefore necessary to keep this point constantly in view.

27. On the other hand, it is thought by most officers that the presumption having been in force for 25 years cannot now be taken away without injustice to them. It is hard on the auction purchaser no doubt, and it is often hard on the zemindar; for many zemindars do not keep regular accounts, while a very large majority of the ryots keep carefully their rent receipts for many years; and as to the respective powers of meeting the burden of proof possessed by the ryot and the zemindar, it is easier to keep a small bundle of *dakhilas* extending over 20 years, than bulky zemindari accounts extending over the same period. On the whole, however, the opinion of the conference was in favour of retaining the presumption.

CHAPTER V.

28. Butwaras are exceedingly rare in this part of the country, the provisions of sections 10 and 11 of Act XI of 1859 for opening separate accounts being very generally preferred to the expense of a partition. On the first of the two points raised under section 25 (1), I do not understand why the right of occupancy should be given to any ryot for a single scrap of land beyond that for which he has earned it. Why should a ryot, who has a right of occupancy for 10 bighas of land which he has held for years, also acquire that right in respect of (say) 5 bighas more which he only took for the first time a year ago? This rule will operate very injuriously against the ryot. If he prospers in the world, and wishes to take up more land, the zemindar will not let him have it because, as he has a right of occupancy for this old land, he would under this section acquire a right for his new land also. I do not see the reason for the rule, and I objected to it in my former reports.

29. All the Collectors fully agree with me on this point, and the Collector of Midnapore further points out that very serious complications would arise in the application of the law from the manner in which estates are constituted in his district. Thus there are in Midnapore (and I may add in other districts also) estates consisting—

(*a*). Of several villages scattered all over the district.
(*b*). Several villages in different districts.
(*c*). Part of one village.
(*d*). Small parts of a large number of villages.

29½. In cases (*a*) and (*b*) there is no reason for giving a ryot exceptional privileges in village X because he happens to hold them in village Y, 50 miles off, simply in consequence of villages X and Y both belonging to the same proprietor.

30. In cases (*c*) and (*d* greater complications still would arise. A ryot having occupancy rights in land in village X, takes up fresh land in that village. If that land belongs to his original landlord, he acquires occupancy rights in it; but if it belongs to another landlord he does not. As the village lies in three or four different estates, he would acquire occupancy rights in one case, and not in another, on a principle which certainly no simple ryot, and probably no one else, could understand. The fact is, the use of the words "village" and "estate" in the same section is contradictory as regards Bengal, where the expression "a village or estate" cannot be considered as the use of two equivalent terms. In my opinion, and that of those whom I have consulted, section 25 should be entirely omitted from the law.

31. Holding this view, it becomes unnecessary to make any remarks on the point (*b*) in your 7th paragraph. I look upon the whole of the provision as uncalled for and calculated to cause endless confusion, while I fail to see in what way any conceivable just rights of the ryots are concerned in the question. If Government insists on retaining this section, at any rate, as suggested by the Collector of Burdwan, the words "or estate" should be omitted, but it will be far better to omit the whole section.

32. Regarding section 29 (1), the conference do not see how it conflicts with section 28. The landlord who acquires the interest of one of his ryots having a right of occupancy is very properly allowed by section 28 to extinguish it, and there is nothing in this repugnant to the provisions of 29(1), by which a person who, in his capacity of ryot, acquires a right of occupancy is not debarred from doing so by the fact that in another capacity he holds a share in the estate. There are frequent instances of persons holding this twofold position, and the practice is that laid down in these sections.

33. We now come to the provisions of section 31. There is not much importance in clause (*b*). Most Collectors agree with me in thinking that ryots very seldom make improvements; they have neither capital nor enterprize sufficient for such a task. In Hooghly, it is customary not to allow ryots to make improvements without the consent of their landlords. The question does not often arise, but it is an understood thing that improvements are not to be made without the zemindar's permission, and they cling very much to this state of things. Moreover, it would be rather a dangerous thing to allow an ignorant ryot to make what he chose to think was an improvement. A favourite kind of "improvement" in some districts, where the soil is undulating, and where torrents are formed after rains, consists in a ryot so damming up or diverting the stream that all the water shall run on to his land and none on to his neighbour's. Another, in land liable to floods, is to put up a mud bank round his fields, which protects them and turns the full force of the flood on to other fields.

34. In fact the ryot is too short-sighted and too selfish to be trusted to make improvements. The landlord is often short-sighted and selfish too, but as he is equally interested in the welfare of all parts of his estate, any improvements he might make would be likely to benefit the whole estate, and not one or two ryots at the expense of the rest. I would omit this clause altogether, because it is not likely to be much resorted to, and when it is resorted to, it will be for the purpose of partial and selfish improvements of one holding to the detriment of others.

35. As to section 31 (*f*), I have already said that I do not regard the mahajan as a bugbear. If he be really an exacting landlord, he will have very little opportunity of exercising extortion when he buys up a small occupancy holding on which there may perhaps be one or at the most two under-tenants. If Government wants to keep the mahajan from acquiring land from fear of his being extortionate, it will be necessary to make a law prohibiting him from purchasing estates at sales for arrears of revenue or by private contract; for it is when he purchases an estate, and not when he acquires a petty occupancy holding, that his oppressive tendencies will find full scope for action.

36. In most districts of this division occupancy rights are freely transferable and saleable, and I am in accord with all those whom I have consulted in thinking that the existing practice should be allowed to stand. The Collector of Hooghly deplores the disappearance of the old patriarchal connection between landlord and tenant, and the substitution for it of purely commercial relations: but there is no use in lamenting what cannot be altered. Writing regarding this division only, I should say that the change has been in many ways beneficial.

37. The conference was unanimously of opinion that transferability should be allowed: indeed most of the officers present failed to see how it could be stopped. The returns of the registration officers show that only a small proportion of purchasers of

land are money-lenders, and even of those entered in the returns under that name, it is believed that a large number are ryots who combine money-lending with cultivation.

38. *Section* 31 (*g*).—The question has already been considered under section 5 (5) above.

39. *Section* 39 (*a*).—Grounds of enhancement. There is no "prevailing rate," as far as I can discover, in any part of this division; but we are all agreed that it would not be at all difficult for a court, either from evidence taken by itself, or from an enquiry conducted by a revenue officer, to ascertain a fair and generally existing average of rents for various classes of soils. In the extensive settlement operations conducted during the last few years in Midnapore, it has not been found impossible to strike average rates which have stood close scrutiny in contested cases in the civil courts. I do not think there is in these parts any danger of collusive rates being put forward; if they were, the courts could easily detect them. This ground of enhancement is not open to the abuses feared, and as it is generally understood, and in itself equitable, it should be retained. As it is now 15 years since the trial of rent suits has been transferred to the civil courts, neither I nor my Collectors are in a position to give any "practical instances" of hardships (if there be any) resulting either from the existence or non-existence of the rule. Government will doubtless obtain such illustrations from the Munsifs, who alone in the present day have actual experience of such matters.

40. Regarding the question raised in your paragraph 10, I am of opinion that in this part of Bengal the ryots in general may be safely trusted to take care of their own interest, and that there is very little danger of their being overreached in contracts made out of court. And with regard to the question of the limit up to which enhancement should be made, my own opinion is that section 48 is sufficient for all purposes, and that the Legislature should not interfere and make irritating and minute distinctions and restrictions which neither zemindars nor ryots are likely to understand.

41. On the whole question of enhancement, Mr. Wilson, the Collector of Midnapore, an officer of great experience, and who has had special opportunities of studying the question, makes the following remarks which, although I do not absolutely agree with them, are so much to the point that I think it better to reproduce them entire:—

42. "The hesitation of the Government of India with respect to this section is, I think, amply justified. If all kinds of crops grew on all kinds of soils, and if price-lists could distinguish between permanent and temporary rises, there might be no objection to the proposed procedure; but neither of these suppositions are in accordance with the facts.

43. "It is obvious that a rise in the price of produce justifies enhancement only if it is not due to failure of crops, and if it is permanent. It is no gain to a ryot to get a higher price if he has less to sell, and no one could think it right to raise a ryot's rent with the prospect of his being entitled to a reduction within the next few years. Both these important considerations have been overlooked in framing these sections.

44. "Except where there has been some special cause at work, such as a new railway, canal or road, giving access to fresh markets, a merely local rise in prices is for the most part due to bad crops either in the locality itself, or in some other locality which it supplies. In the former case it cannot be taken as indicating increased profits from cultivation, while in the latter it can. No mechanical process of calculation can ever determine which is the true state of the case in any particular instance. Moreover, in either case such a local rise in prices could not be expected to last. A local rise in prices then must be carefully studied before it can be accepted as a legitimate ground of enhancement

45. "In the case of a general rise of prices, it is equally easy to show that no such mechanical process of calculation as this section contemplates can safely be relied upon. Any one who takes the trouble of examining old price-lists will confess that it is not an easy thing to decide what quinquennial period in the past can equitably be taken as a standard of comparison; but I will assume that this difficulty has been surmounted, and that (say) 8 annas a maund, the average price of paddy in the years 1851—55, is to be our starting point. Since this, there has probably been on the whole an upward tendency, but it has not been an uninterrupted progress. Two or three years of high prices have been followed by two or three years of abundant harvests and low prices. Being anxious to enhance, I naturally wait for a favourable opportunity, when a famine in Madras or elsewhere makes an extraordinary demand on stocks already diminished by a couple of indifferent seasons and raises prices to a high figure. Now is the time for my suit, and instead of 8 annas a maund I can honestly prove that the prices of the last five years have been (say) ten annas, twelve annas, one rupee, then two rupees, and last year one rupee eight annas. Thereupon the court, if it follows this section, will turn me out an average of close on 19 annas as the current price of paddy. Sub-section (*b*), no doubt, stands in the way of a corresponding enhancement of rents, but it is obvious that a process which can give 136 per cent. instead of 20 or 25 per cent. will be capable, under other circumstances, of giving 25 per cent. instead of 10 per cent., or nothing at all It may perhaps be said that in the supposed case the mistake lay in taking for comparison the period 1851—55. But the five years immediately preceding the suit must be taken as one of the two periods to be compared, and if these five years included a Madras famine, the court proceeding under this section could only arrive at a correct result by selecting for comparison some past quinquennial period also, including a famine as disastrous as the recent one.

46. "Prices fluctuate so much from year to year, and from period to period, that from the comparison of carefully chosen periods almost any result could be worked out, and as the choice of one of the two lies with the plaintiff, the game is in his hands.

47. "Then again the court is not to look at the price of what the land in question produces, but the price of staple food-grains. So the tenant of high land, which produces mulberry or oilseeds or tobacco, and the Sonthal who extracts a crop of biri kalai out of a couple of inches of soil over the laterite, must pay higher rents if this section be followed, because the cultivator of rice land gets a better price for his produce. It is not possible to calculate the rent-paying capacity of land which produces (say) castor, but could not produce paddy, from the price of paddy which grows on land incapable of producing castor.

48. "Section 48 provides that no enhancement shall be decreed which appears, under the circumstances of the case, to be unfair and inequitable, and the courts would no doubt in time discover and apply the limitations required to prevent injustice; but it seems to me much better that the law should be, as far as possible, complete in itself. Its principles at all events should cover all classes of cases.

49. "In order then to diminish the chance of error likely to arise from mistaking a temporary fluctuation for a permanent rise in price, the periods to be taken for comparison should not be quinquennial, but decennial. Three bad seasons often come together, and they would not falsify the figures of ten years so much as those of five.

50. "Then it should be made clear that the price-lists of staple food-grains shall not be taken as a basis of enhancement in the case of land incapable of producing such grains.

51. "In such cases the prices of the crops which the land does or can produce should be alone considered It would not do to presume the existence of a rise as calculated from the published price-lists, leaving the ryot to relent the presumption, because, while the zemindar would have an easy means of establishing his case, the practical difficulties in the way of the ryot would be very great.

52. "Again, following the decisions of the High Court under the existing law, it should be clearly laid down that the court, while accepting a rise in published prices as *primâ facie* a valid ground of enhancement, shall not follow them blindly or mechanically, but shall be bound to satisfy itself that the increased average is not due to one or two exceptional years, and the increase, if real, is not, so far as can be judged, due to exceptional failure of crops or other temporary causes.

53. "With respect to the cost of cultivation also, I think that some modification of section 45 is necessary. As different meanings have been sometimes given to the term cost of cultivation, it seems best to put the matter in a form leaving no room for ambiguity. Of the crop which a ryot produces, one part (A) goes to feed himself and his family; another part (B) pays for whatever necessaries and comforts he has to buy for domestic use; a third part (C) pays his rent, and a fourth part (D) pays for bullocks, ploughs, extra labour, and whatever else he has to spend in order to carry on his cultivation. At present A, I will suppose, is worth in rupee E; B is worth M; C is worth N, and D is worth O. If prices double, and he has to pay 2 N as rent and 2 O in the purchase and feed of bullocks, &c., this will not affect the amount of A, and will leave him for domestic purchases 2 E. His position therefore remains unchanged if the rise in prices has been uniform in all directions. But it may well happen that the price of cattle or labour has risen more than the price of food-grains, and it should, I think, be open to the ryot to show that this has been the case, and to demand a deduction from the enhancement which the strict rule of proportion would give.

54. "I fear that the provisions of this sub-section [46 (*c*)] would lead to difficulty and confusion. It would, I think, be better to omit the words 'or likely to be caused' from sub-section (*b*) (1), and only to call on the ryot to pay for improvements after their benefits have reached him. This would apparently be more equitable as well as more convenient."

55. Though, as I said above, the Collectors of this division have not had much practical experience of late of these questions, yet from their general knowledge of their districts, the members of the conference were of opinion that the provisions of section 41, by which enhancement by private contract gives the zemindar comparatively unfavourable terms, will have the effect of driving the parties into court about a matter which they would otherwise settle amicably between themselves, and they are all agreed that this is very undesirable.

56. The Government Pleader of Hooghly observes that, unless enhancement by private contract is equalized with enhancement by decree of court, no ryot will consent to an amicable arrangement, as he will always have the hope that by forcing the landlord into court he will get better terms. This will encourage litigation, which it is desirable for many reasons to discourage.

57. With regard to paragraph 11 of your letter, section 42 (1) is objected to by myself and all those whom I have consulted. The feeling is general that the zemindar, having been by other provisions of this Bill hampered and impeded in many ways in endeavouring to get a living out of his estate, should at any rate be allowed to make what he can out of the non-occupancy ryot. Section 42 (1) allows the zemindar to obtain whatever rate he can by private contract, and it will be easy for him to evade the provisions of this section. The land had a market rate of rent, and if the settled ryot will not agree by contract to pay this rate, the zemindar will let the land to some one else who will. The law allows him some freedom in his dealing with non-occupancy ryots, and he will find it therefore to his interest to re let the land to such an one, and not to a settled ryot in respect of whom his transactions are hampered by all sorts of restrictions. The settled ryot will therefore only be able to get

the land by offering a higher price for it than the non-occupancy ryot. It seems therefor certain that this section will have the effect of enhancing the scale of occupancy lands as anticipated by Government. There seems no necessity for this section at all. In this opinion we all concur. The question of the non-occupancy ryot will be discussed further on under chapter VI.

58. Your 12th paragraph regarding bastu lands. There are so few butwaras in this division that no light can be derived from that source. During the time I have held my present post, only four butwaras, two of which are very petty, have occurred. The local custom in different districts varies somewhat. I will therefore give the statements of each Collector separately.

59. In Midnapore the ryot, when ejected from his holding, loses his bastu land also. The landlord insists on this, as he would find it difficult to get a new tenant for the land unless he could also provide him with a homestead. In Hooghly, on the contrary, the ryot who gives up or is ejected from his land does not necessarily lose his bastu, though he is frequently required to pay a higher rent for it than if he held land also.

60. In Bankoora the bastu land is generally held separate from the cultivated land, and at a separate rent. Loss of the latter would not therefore involve loss of the former. The same practice prevails in Beerbhoom. In Burdwan ejectment is very rare, but a ryot occasionally relinquishes his lands, in which case he retains his bastu, which is stated to be usually held under a separate engagement.

61. It will be seen that Midnapore differs from the other districts of Western Bengal in this and, I may add, in many other respects. In that district many of the worst forms of the struggle between landlord and tenant, happily unknown in other parts of the division, prevail.

62. It would doubtless be very much to the benefit of the ryot that he should always hold his homestead land on a different tenure from that on which he holds his cultivation. Rents of bastu land are not now liable to enhancement, and I think this state of things should continue. In a village where the land is divided between many landlords, it is not just that a ryot should lose his homestead because he gives up his land under landlord A, and takes to cultivating land under landlord B close by. I would protect the homestead, taking all power over it out of the landlord's hands, and would make him in respect of all land in towns, hamlets, and villages (by which I mean clusters of houses), subject to the ordinary civil laws, and not to the revenue law. It is desirable, in view of the great progress that the country is now making, that facilities should be given for the establishment of new towns and large manufacturing villages, and that, when he grants or leases land for such purposes, the zemindar should be a free agent, and be delivered from the numberless irritating restrictions which hamper him when he deals with land let for agricultural purposes From the ryots *bastu* to the big trading town or the large factory, all land occupied for dwelling purposes should be put on the ordinary footing of all mercantile transactions and ruled by the general Civil Code.

63. *Section* 51(*a*).—In this division deposit of sand is the chief cause of deterioration; sometimes, however, denudation occurs, as in the hilly parts of Bankoora, where cultivable soil may be washed away and bare rock left. This is, however, rare. The word "calamity," used in this section, is perhaps not well selected, as in the minds of many people it implies some sudden catastrophe, though of course no such meaning is really inherent in it. To avoid misunderstanding, it would be better to use some other word.

64. Grain rents are not common in this division, except in Bankoora and, I believe, in parts of Midnapore. The Collectors see no objection to the provisions of section 53 in general, but the Collector of Bankoora states that those whom he has consulted are mostly opposed to the provisions of clause 4(*a*). The commutation should, they think, be based on a calculation of the proportion of the crop which can be considered as the natural equivalent of a money rent. The ryots in Bankoora are very desirous of commuting their "sonja jummas" or grain rents, and this section would be largely resorted to in that district, though probably not in other parts of the division.

65. *Section* 52.—The information supplied by the Collectors is generally to the effect that price-lists for some years past are in existence in the district offices, but that they are not to be relied on. It would be possible in most places to test their accuracy by reference to local traders, though there is a reluctance on their part to reveal more than they can help for fear the information should be used against them in connection with the license tax. The price-lists prepared at the thanas are mostly inaccurate, being generally prepared by a constable after superficial enquiry. They are perhaps correct enough for the use that is made of them at present, but it would require much greater accuracy to render them sufficiently trustworthy for the use of a civil court. In Midnapore, recently, these thana price-lists had to be referred to when revising the settlement of the large Government estates, and the Collector detected several undoubted inaccuracies in them.

66. Your paragraph 15. There is an entire agreement of opinion among the officers consulted as to the necessity for making allowance for the increased cost of production following on an universal rise in prices; but we do not think that any limit need be fixed. The provisions of section 48 are, we think, a sufficient safeguard against excessive enhancement It is not possible to supply any examples from actual practice as required in your 15th paragraph, because Collectors in the present day have no means of becoming practically acquainted with such matters: the Munsifs will probably be able to supply the required illustrations. As we recommend that there should be no hard-and-fast

rule laid down as to the amount of enhancement, it is unnecessary to discuss the extent of deduction to be allowed in remote districts as compared with those which have railways. The courts will doubtless, when necessary, take such facts into consideration.

67. There is no such question in this division as that mentioned by you in regard to the jute cultivation. The only food staple, besides rice, which is grown in very large quantities, is the potato in Hooghly; but the Collector thinks, and I agree with him, that even this article is not yet grown in a sufficiently large quantity as to seriously interfere with the position held by rice as the chief food staple of the district.

68. When a rent in kind is commuted to a money-rent, a very large deduction should be made from the average money value of the rent in kind paid during the last ten years. A ryot can pay a grain rent much more easily than he can pay the equivalent in money. The grain rent being usually a certain proportion of the outturn, rises and falls according as the harvest is good or bad; but the money-rent is so much a bigha, no matter what may be the outturn, and even the most careful ryot is liable to be involved in debt and difficulties by two or three bad harvests in succession.

69. It has been suggested that a clause should be added to section 53 4) (*b*), explaining that, in deducing equivalent money rents from grain rents, allowance should be made for the above facts. I am not sure, however, that this is absolutely necessary, as such considerations would probably occur of themselves to any officers trying such a case.

CHAPTER VI.

70. On non-occupancy ryots. The point of the argument contained in your paragraph 16 is somewhat difficult to grasp, and it has been apparently understood in different ways by different officers, some holding that the position of the non-occupancy ryot will be improved, and others that it will not. There is a general feeling that the provisions of this chapter will have a tendency to bring both landlord and tenant into court unnecessarily, which is more detrimental to the latter than to the former. On the other hand, the tenant is protected from unconditional enhancement, while it does not seem that any material change is effected in his chances of acquiring occupancy rights. The question was raised some time ago whether landlords did, as a rule, take action to prevent ryots from acquiring occupancy rights, and it was found that in the great majority of cases in this division they did not do so. I see no reason for supposing that in this part of Bengal non-occupancy ryots will be at all generally compelled to relinquish and re-enter under a lease.

CHAPTER VII

71. I object strongly to the whole of this chapter, and so do the Collectors. There must be at the bottom of the scale some freedom of competition. A law which imposes stringent rules upon a class who very seldom have any chance of finding out what the law is, is sure to be evaded and disregarded. I have already expressed an opinion adverse to sections 37 and 38, and I am opposed on general grounds to over-legislation of this kind. The ryot should be allowed to get what rent he can out of his under ryot. Both men being of the same, or nearly the same, rank in life, and enjoying the same, or nearly the same, amount of influence, they should be left to settle matters between themselves; there is no fear of the one bullying the other, as there seems to be in some people's minds of the zemindar bullying the ryot. No such limitation would probably be of any effect in checking the practice of sub-letting.

CHAPTER VIII.

72. The only question raised here is the adequacy of the forms of receipt and account in Schedule III. To my mind a much more practical question is—How are you going to compel people to use them? The landlord may be fined if he is found out, but it is no ones interest to betray him. The Collector of Bankoora observes that the forms are too intricate to be intelligible to the illiterate people of his district, but the Bill provides for this by allowing receipts to be given in any other way prescribed by the Local Government. When the Bill is passed, Collectors may be asked to consider this point with regard to the circumstances of their respective districts, and where the form is found to be too intricate, Government may be asked to substitute a simpler one. The forms are good ones in themselves, and I have at present no alteration to suggest, except the omission of the Behar word "baoli," which is not needed and not understood here. The Collector of Hooghly takes exception, and I think reasonably so, to the provisions of section 69 (1), which enables a tenant, when making a payment of rent, to declare the instalment for which he pays it. The old and well known rule in rent payments, as well as in all mercantile transactions, is that a payment shall be credited to the oldest unpaid arrear, and when it is disputed which is the oldest unpaid arrear, there seems to be no reason why the ryot should have the right of deciding the question by insisting that the payment shall be credited to the oldest arrear instalment which it pleases him to admit.

73. *Section* 67—Calls for some remarks. The Collector of Midnapore puts the matter so clearly and fully that I cannot do better than reproduce his remarks in full:—

74. "I doubt very much whether it is wise to attempt to introduce the English practice of paying rent on fixed quarter days.

"In the greater part of this district the Umli year prevails, and the following table shows the instalment (stated in annas) of rent which is at present payable each month. In fact, however, the monthly instalments are not paid or demanded, and it is only for the purpose of causing expense and annoyance to some ryots who opposes him that a zemindar ever sues for a monthly instalment. At or about the end of the year there is a fixed day, called the punya, when the ryots are expected to pay in something on account of the new year first commencing.

"If before this time his rent for the past year has been all paid, a ryot has in most cases nothing to pay as interest on account of the instalments not having been punctually paid on the due dates. If any balance remains, interest is charged on it for the past year at an all-round rate without considering for how many months it has been due. The way in which this rate is arrived at will appear from the table which follows. The monthly instalments are such that, if interest at 12 per cent. be charged on each up to the end of the year, the total interest on Rs. 100 amounts to Rs. 8-2-9. The all-round rate should then be 8·17 per cent., or a little more than 1¼ annas on a rupee, but the usual practice is to take it as 2 annas. In some cases, by special agreement a higher rate than 1 per cent. a month, or 12 per cent. a year, is charged.

Month.	Amount of instalment in annas.	Number of months on which interest is payable up to the end of the year.	Interest accruing up to the end of the year on each unpaid instalment of a total rent of Rs. 100 at 12 per cent. per annum.	Corresponding instalment of revenue.	Interest at 12 per cent. on Rs. 100 up to the end of the year.
	Annas.		Rs. A. P.		Rs. A. P.
Assin	¼	12	0 6 0	5¼	3 1 6
Kartick	1½	11	1 0 6		
Aughan	3½	10	2 3 0		
P us	3½	9	1 15 6	7½	2 10 0
Magh	2	8	1 0 0		
Falgoon	2	7	0 14 0		
Chaitra	¼	6	0 4 6	1¼	0 3 9
Baisack	½	5	0 2 6		
Jaisto	½	4	0 2 0		
Assar	¼	3	0 1 6	1¼	.....
Shrabon	¼	2	0 1 0		
Bhadra	¼	1	0 0 3		
Total ...	16		8 2 9	16	5 15 3

75. "The effect of this section would of course depend to a great extent on the dates and instalments to be fixed by Government; but I will assume for the present that one day for payment would be fixed at or about the end of each quarter, and that the instalments would correspond with the instalments now fixed for the payment of revenue.

"*Primâ facie* then if the same rate of interest were charged the ryot would gain considerably from the proposed change. But it is tolerably certain that if fixed days of payment are prescribed by law, the indulgence at present generally granted to ryots who pay in full at any time within the year will no longer be granted. Interest will be charged on all sums not paid punctually on the due dates. I presume here that section 79 will be so interpreted as to allow of this, since otherwise it would be useless to fix quarter days, the ryots having no inducement to observe them. It is often difficult, even for a moderately rented ryot, to pay money punctually, except at harvest time, without borrowing (in which case he would certainly have to pay more than 12 per cent. interest), and consequently it is very doubtful whether the apparent gain to the ryot would not turn out to be a real loss. So far as the ryot is concerned, the only changes required in the present system are such as will prevent the institution of vexatious suits for monthly instalments and the realisation of excessive interest on arrears outstanding at the end of the year. The former evil might be stopped by the simple provision that no suit for the realisation of the rent of any holding shall be entertained within three months from the institution of a previous suit for the realisation of the rent of the same holding With reference to the latter, it might be sufficient to provide that, in the absence of a registered agreement, no court shall decree interest on a ryot's rent at a rate exceeding 12 per cent. for the period which has elapsed since the end of the year on account of which the rent was payable.

76. "For the period within the year during which rent was due but unpaid the courts might be empowered to decree, at the option of the landlord, either at the rate of 12 per cent. calculated in detail, or at the all-round rate of 1¼ annas in the rupee. As the heavy instalments fall early in the year, this latter provision would be fair to the ryot, wherever the Umli year prevails. Where the Bengal, year prevails, and the heavy instalments come at the end of the year, the all-round rate of 1 anna might be sufficient.

77. "It is necessary to legalise the all round rate in order to relieve landlords from the necessity of making troublesome calculation about petty amounts.

78. "Section 79 as it stands would be no sufficient check on the prevailing oppressive practice. For the landlord it would no doubt be very convenient if he could realise his rent on

certain fixed days with the same punctuality with which he has to pay his revenue. But except in the case of exceptionally moderate rents, such punctuality is, I fear, not always attainable. Whenever rents are taken in money, the risk of good and bad seasons falls on the ryot, who, not being for the most part a capitalist, can only pay his rent punctually in bad seasons with the aid of the much-abused but necessary village mohajun, unless his rent is so moderate that even in bad seasons the produce of his holding is sufficient to pay his rent as well as to maintain himself and his family.

79. "It is of course essentially necessary to prevent the landlord from harassing the ryots by suing them for rent on every monthly instalment. But I think the limitation of instalments to four in the year would be productive of much hardship. It must be constantly borne in mind throught this Bill that wherever the law introduces new provisions for the advantage of the ryot the zemindar will, as a rule, keep the ryot to those provisions, and withdraw many of the indulgences which kindly feeling and friendly relations of old standing have allowed to grow up between landlord and tenant. It is therefore not wise to over-legislate. I would omit the words "not being more than four in each year" from this section. When it comes to be applied the local Government, in consultation with the Board of Revenue and the other revenue officers, will be able to fix such instalments as may be found suitable to the circumstances of each district."

80. With regard to section 75 (2) I agree with Mr. Wilson in thinking that it would be very difficult to comply with it in his district (Midnapore), and may add in Hooghly and Burdwan also. The Collector has in a vast majority of cases no means of knowing who the claimants are. There are often very many shareholders, some of whom live in other districts and whose names and residences are not known to the ryot The Collector suggests the starting of a District Gazette to contain these and similar notifications, as is the practice in the Madras (and I believe the Bombay) Presidency. This would be an excellent step on many grounds, but the matter is perhaps beyond the scope of the present discussion.

81. I would omit section 75 (2) altogether. If the shareholder in an estate tries to realise from the ryot in his village, the Collector's receipt for the deposit will be sufficient protection for the ryot, and the sharer can then go to court and get his money under section 76 (1). If the notice in section 75 (2) is thought indispensable, then it will be necessary to see that the provisions of section 7, clause (c) of the Land Registration Act, which requires that the address of every sharer in an estate should be inserted in column 3 of the register of revenue-paying lands, part I (generally known as register AI), should be strictly observed. At present, as I gather from my annual inspections of these registers in the various districts of this division, the addresses of all proprietors are not invariably entered.

82. In my remarks on section 5 (5) above (see paragraph 15) I have said something about sections 85 and 86. I may here observe that in those parts of the country where the zemindar is influential enough to levy illegal cases at all, it is idle to expect a ryot to cut his own throat by suing the zemindar under section 86. A ryot who had succeeded in getting his landlord fined Rs. 500 would pronounce a decree of banishment against himself, for he would, as I said above, have made his native village too hot to hold him. He would become an object of bitter hatred to his zemindar, and would be the mark for every species of petty tyranny that malice could invent. And the zemindar would very soon find means for getting the Rs. 500 back into his own pocket with heavy interest.

83. Where a zemindar levies illegal cesses at all he levies them from all the ryots and not from one only. It is useless to expect any one ryot to bell the cat. I would empower the Collector of his own motion, whenever it came to his knowledge that illegal cesses were being levied in any estate, to take the matter up either in person or by an officer not lower in rank than a Deputy Collector. Such officer should have power to call for and record evidence and compel the production of all papers, and if he arrived at a finding that illegal cesses had been levied, he should be empowered to give a decree for their refund, or if the ryots preferred it for the amounts being credited in satisfaction of any unpaid instalments of rent due from them, and if no instalments were due, then as an advance against the next that might fall due, and the zemindar should then and there be compelled to give receipts for the amounts to the ryots. If he refused or neglected to do so, the Collector or Deputy Collector should give the receipts. Thus the ryots would be recouped, and they would at the same time be protected from the effects of the zemindar's revenge; for though it might be worth his while to take revenge on a solitary ryot who had sued him under section 86, he could not do so on the whole body of ryots.

84. Another reason for recommending this procedure is that the illegal cesses levied, though collectively they amount to a large sum, are taken in such very small sums from each individual ryot that it would not be worth the while of any one man to incur the zemindar's displeasure by suing for their recovery. Levied as they are, a few annas from each ryot at a time, they are injurious by frequency with which they are demanded, and the total want of consideration shewn in apportioning the demand. They are like drops of water constantly falling, and we know from history that one of the worst tortures of the inquisition consisted in letting single drops of water fall on a man's head at short intervals till he was driven mad.

85. The zemindars who take illegal cesses are very often ignorant that the practice is improper. The enquiry by a Deputy Collector, and the consequent enlightenment of their ryots as to its illegality, would be sufficient to put a stop to the practice in a year or two without any heavy penalty being inflicted on the zemindar. I would, however, make him pay all the costs of the enquiry.

CHAPTER IX.

86. There is no question with us as wells for agricultural purposes, as they are unknown in this division. In the high lands of western Midnapore and Bankoora, however, much importance attaches to the construction of *bandhs* or reservoirs made by damming up the ravines between two hills. These works are far more costly than ryots as a rule could undertake, and it will therefore be better to include them under the general head of improvements, which I now proceed to discuss.

87. It is our unanimous opinion that the ryots, as a rule, are too poor to make improvements, and I have, when discussing section 31 (*b*), expressed the opinion that if ryots are allowed to make what they consider improvements, it will generally be found that they are such as benefit themselves at the expense of their neighbours. In such cases it might not be possible to prove under clause (3) of section 87 that the improvement substantially diminished the value of the whole or any appreciable part of a large estate, but the transaction would undoubtedly give rise to feuds and affrays between neighbouring ryots, which it is not desirable to encourage.

88. For this reason, even if it should be thought advisable to allow ryots to execute improvements at all, I would throw the weight of the legislature on the landlord's side, and I would enact the direct reverse of section 89, clause (2), providing that in cases of dispute as to the right to make improvements the priority should be with the landlord and not with the ryot. I do not think this matter is of much immediate importance, as the present generation of ryots is not much given, or in fact able, to make substantial improvements. The only person who has capital or enterprize enough to make really useful improvements is the landlord, and Government wishing, as it must, to see the country improved, should lend the weight of its authority to him.

89. The officers present at the Conference agree entirely with me on this point, and with regard to the question raised in clause (1), paragraph 2 of the Government of India's letter, Mr. Toynbee, Collector of Hooghly, who was for many years an irrigation officer, is if opinion that such powers as are there mentioned should certainly be given to revenue officers, being absolutely necessary to the proper working of canal irrigation, but that the proper place for such provisions is not a Rent Bill, but an Irrigation Bill. Those members of the Conference who have had any practical acquaintance with irrigation matters (including myself) are of the same opinion, and would prefer not to have the powers provided by this Bill.

90. Your paragraph 20, regarding section 96, it is the general opinion that the provisions are fair both to landlord and tenant. It is not thought that they expose the ryot, whether occupancy or non-occupancy, to any danger of having established or inchoate rights suppressed. It may undoubtedly be the case that zemindars have ejected ryots unfairly, but no instances of such proceedings have come to light in this division, and it must not be forgotten that in fairness to the landlord the law should allow him every facility for keeping the lands for which he has to pay revenue to Government in the hands of cultivators. It would probably lead to much confusion if the interest of a deserting ryot were allowed to be sold. The section as it stands affords ample safeguards to the ryots against any illegal action on the part of the zemindar.

91. Your paragraph 21 My own opinion is that all that the zemindar can fairly claim in respect of lakhiraj lands is to measure their area or external boundaries In cases where he suspects that a lakhirajdar has encroached upon his mal land he can institute a civil suit for recovery, and the court will order measurement; but in other cases all that he has any right to do is to measure round the tenure. The officers present at the Conference also hold this view.

92. I consider that the measurement should be made in all cases by the standard English pole, but as there was some difference of opinion among the Collectors, the matter was discussed at the Conference. After considerable discussion it was eventually admitted by the advocates of the local system of measurement that the English system offered the least opportunity for fraud or dispute. The local poles are very numerous, and often the zemindar asserts that one standard is in force, while the ryot asserts another. If a ryot wishes to know the area of his holding, it can be converted for him from the English to the local standard, and as a matter of fact the ryot is, as a rule, only anxious that the number of plots with their well defined ridges which he claims should be measured in his name than that any definite area of land should recorded. The conclusion arrived at was therefore in favour of the English system.

93. Your paragraph 22. I myself and a majority of the Collectors are in favour of the sections 102-109 standing as they are. I think the appointment of a manager is often the saving of an estate. I know one case—that of Jokhodia in Noakholly—in which, when I was Commissioner of Chittagong, a manager was appointed with the very best possible results, and the co-sharers themselves, though at first some of them were very much opposed to the measure, ultimately, I believe, acquiesced in it, and admitted that it had been very beneficial * * * * I would, however, restrict the power of application under section 102 (*b*) to co-owners, as I do not see what right any one else has to interfere in the matter. Section 102 (*a*) supposes a case which is very seldom likely to occur.

94. The only dissents are that of the Collector of Bankoora, who would extend the provisions only to such estates as are able to bear the cost of a manager on Rs. 50 a month, and that of the Collector of Burdwan who thinks that the risk of harm to an estate from an

unprincipled manager are greater than those likely to accrue from disputes. To the first it may be replied that in the case of very small estates (and they must be very small if they cannot afford to pay so much as Rs. 50 a month) the general manager appointed under section 105 would take the estate under his charge, or the Court of Wards might manage it very cheaply. To the second I can only reply that I consider the guarantees afforded by the Act are sufficient to prevent the appointment of an incompetent or unprincipled manager.

CHAPTER X.

95. I have already expressed my opinion on this point more than once, and I can do no more than repeat what I have already written. It would undoubtedly be a great benefit to the country if there were in existence such a record of rights. In the early years of my service, which were passed in the Punjab, I learnt to appreciate at its full value the record of rights for each village in the country, which exists in that Province. But to introduce the system into an old and permanently-settled province will not only be very expensive, but will stir up agitation and litigation on all sides. The officers I have consulted agree with me in thinking that the whole procedure is objectionable, and in hoping that the country is not about to be plunged into a state of confusion unparalleled since the days of native rule, merely for the purpose of endeavouring to arrive at a result which can never be attained. As I have discussed this question at much length in paragraphs 79-94 of my No. 339, dated 22nd June 1883, and again in demi-official note written at Mr. Bernard's request in April last, it is not, I think, necessary for me to say any more on the subject. Mr. Wilson, the only Collector who has considered the point carefully, also refers to his demi-official note written at the same time as mine above referred to.

96. Your paragraph 24. The remarks in the last paragraph apply equally to chapter XI. It would be, we are all agreed, impracticable to form tables of rates which would have any real value or represent actual facts. The tables would be worse than unless, and the expense of preparing them would be a very heavy burden upon the ryots and the zemindars In the present day the country (I speak of Bengal proper) has got accustomed to having its rents decided by the courts, and is sufficiently civilized to be left to fight its own battles.

97. Chapter XII has no practical importance in this division, as the question of zemindar's khamar lands has never given rise to any difficulty or dispute. None of the Collectors know of any other class of land which could be brought under section 138 (1).

CHAPTER XIII.

98. I have always held, and still hold, that the power of distraint is an ancient and well established right of zemindars, and that it would be unfair to deprive them of it. In the present day in Bengal proper, I do not think it is nearly so much abused as is popularly supposed. It does no harm to the ryot if legitimately practised, and, as remarked in your letter under reply, is really in many cases a more humane proceeding than suing with its attendant processes.

99. From the reports of the Collectors it appears that in Burdwan, Midnapore, and Bankoora distraint is not often resorted to; the question therefore possesses very little interest as regards those districts. All the Collectors, however, agree with me in thinking that it should be retained. This being so, the only question that arises is—Shall distraint be allowed to be made by the zemindar direct, or only through the court? I have no hesitation in saying that the procedure of section 13, compelling zemindars to apply to the court for distraint, robs the process of all its value, and virtually takes away from zemindars the power altogether. The essence of distraint, and that in which its sole value lies, is rapidity. Before the ryot has time to carry off his crop it is distrained. If the zemindar has to apply to the civil court to supply seven separate heads of information, to file documents, be examined in court, and all the rest of it, the ryot will have ample time to remove his crop. The provisions of section 141, clause 3, will be of little use, for even they will take too long a time. Clause (4) of that section talks about order for distraint being made a considerable time before the crop is ripe for harvesting—an expression which has no meaning in this connection. The instalments for paying rent by ryots are fixed so as to fall when the crop is ripe, and as no arrear can arise till the date of payment is past, no distraint can take place till the crop is ready to be cut. I forget how matters stand in Behar, but I am writing about Bengal, and I do not think it advisable to look at all Bengal through Behar spectacles as there seems to be a tendency to do all through this Bill.

100. If distraint is to be of any use to the zemindar he should be allowed, as at present, to distrain through his own agency under such safeguards as may be devised, and subject to severe penalties in case of illegal action. It would be easy to secure this by framing a section similar to section 78 of Act VIII (B.C.) of 1869; also sections 98 and 99 of the same. These old provisions are everywhere known and understood, and afford all the necessary protection to any ryot who is not an absolute child. The ryots in most parts of this division are by no means children, and know how to take care of themselves uncommonly well. It does not seem fair that the zemindars of Bengal should be deprived of an ancient right which there is no danger of their abusing, because the ryots of Behar cannot protect themselves from oppression.

CHAPTERS XIV & XV.

101. I regret that neither I nor my Collectors are able to offer any suggestions on this head. We should prefer not to give an opinion on subjects which lie beyond our province. One or two remarks have been made by one Collector, but in the absence of any practical experience of judicial work this cannot be regarded as having much value.

CHAPTER XVI.

102. I think it is a great pity that the old putni law cannot be left alone. There is not the slightest necessity for dragging it into this Act. If, however, this must be done, then as few changes as possible should be made. The only Collector who has gone fully into this question is Mr. Wilson, with whose remarks I entirely concur. They are as follows:—

CHAPTER XVI.

103. "There are a few points in this chapter which call for notice.

"Baisack is not the first day of the year where the Amli year prevails.

"195. This section omits, probably through an oversight, the ten days' notice required by Regulation I of 1820, section 2 (2).

"198. It seldom happens that a tenant's objection can be disposed of before sale day. At present when on sale day an objection is found to be pending, the Collector requires the putnidar to deposit the amount claimed, and hears the objection afterwards. This procedure works well, and is in fact one of the principal things enabling the putni law to work so smoothly as it does.

104. "The Bill changes all this. The objecting putnidar must either pay the zemindar's claim or allow his tenure to be sold. The only remedy apparently open to him is a suit to set aside the sale. Such a procedure as this would leave the tenant entirely in his landlord's power, and could not work for a year without producing a crop of scandalous injustice. If it be thought necessary to get rid of the Collector's summary enquiry then certain fresh provisions must be added.

105. "Under section 205 any person aggrieved by a sale effected under cover of, but not in accordance with, the provisions of this chapter can sue for cancelment of the sale and for damages. But nothing is said about a sale effected in accordance with the provisions of this chapter for the realization of a claim found to be invalid. In such cases damages not exceeding double the invalid claim should be recoverable.

106. "Further, if a putnidar to save his tenure from sale pays his landlord's claim, he should be entitled, on proving the claim, or any part of it to be invalid to recover in the civil court damages not exceeding double the amount of the invalid claim, besides recovering the amount wrongfully exacted.

107. "Without some such provisions as these, I have no hesitation in saying that this procedure, which has now worked smoothly for more than half a century, will become in its proposed form incapable of equitable working.

"The best course probably is to retain the Collector's summary enquiry.

108. "201 (5). When the purchaser is the zemindar, the present practice is to let him pay only the difference between his claim and the selling price. This is convenient and apparently unobjectionable.

109. "(6). The time allowed for notifying resale, *i.e.* the afternoon of the eighth day only is not sufficient. Resale should take place on the tenth day.

110. "203. I see no reason for relieving the zemindar from the duty imposed on him by Regulation VIII of 1819, section 15, of letting the purchaser have access to the papers in his office regarding the tenure.

"It should be made clear from what date the purchaser's possession is to be held to commence and the defaulter's to cease.

111. "207 (*c*). The sale being held in the Collector's office, the words 'of the Collector' might be omitted.

112. "208. If, as sometimes happens, several days at the beginning of Kartick are close holidays, so that petitions under section 197 are several days late, it seems desirable that the sale should be postponed till a corresponding day in Aghran, the date before which notice must be served being similarly moved forward.

113. "209. I see no reason why the proposed summary procedure should not be made applicable to the recovery of road and public works cess from rent-free tenureholders, nor does it seem necessary to exempt from it those dependent taluks which formerly paid revenue direct to Government. There are no such taluks in the district."

CHAPTER XVII.

114. *Section* 210—I am opposed on principle to unnecessary interference by legislation, and I think freedom of contract should be allowed in a great majority of cases, if not in all. Of course it may be said that if ryots and landlords are to be allowed to contract themselves out of the law, there is no use on having a law at all. But to this I reply that as I understand the matter the principal object of the Bill is to protect those ryots who are too poor, ignorant, or in other ways weak to protect themselves. For them the very minutely interfering provisions of this Bill may be necessary and useful, but the main fault of the whole thing, in my view, is that it compels ryots who are advanced and intelligent and well able to take care of themselves to sit under the same protection as is provided for the backward ones. It retards the progress of the country. It puts grown men into leading-strings, because infants cannot go without them. Why should an intelligent ryot of Lower

Bengal be treated like a child, because the Behar ryot requires such treatment? The whole of this section is very strongly objected to by the zemindars of this division, and I entirely agree with them. It is an altogether unjustifiable curtailment of their rights.

115. Section 213 is generally thought unnecessary. I beg a reference to my remarks in paragraph 8 above. As the definition in section 5 (3) stands, it is doubtful whether the cultivator of chur land can be considered a ryot at all. But if that definition be altered so as to bring him under the head of ryot, then I think instead of the 12 years' period within which he cannot acquire occupancy rights, the principle of which I do not understand, it would be simpler and more in consonance with the equity of the case to rule that so long as *churs* or alluvial accretions have not been surveyed or assessed to land revenue under the provisions of Act IX of 1847, so long no right of occupancy shall accure. Such right, however, should begin to run from date of settlement, and should then be acquirable under the same conditions and by the same lapse of time as other ryots.

116. As to clause (2) I do not see what the civil court has to do with such matters. It is for the revenue officers to decide when any land has ceased to become chur, though I must confess that I never yet heard or know of any land which having once been chur ever ceased to be such.

117. *Section* 215.—It should be made clear that a right of occupancy cannot be acquired by any person holding land under a service tenureholder. This is important in this division, where ghatwals, pharidars, and other service tenureholders often hold land in very great quantities and have numerous ryots under them.

118 *Section* 223.—To the powers specified in this section should be added that of imposing a daily fine under Act XX of 1848 for non-compliance with orders to produce papers. This is very essential, as nothing hampers the proper execution of business so much as the inveterate habit many zemindars have of withholding or delaying the production of necessary information.

119. *Section* 227.—In most districts of this division there is very little pasturage. This is a serious drawback, and I am not sure to what extent the general provisions of the Bill will operate to stop the gradual conversion of pasturage into arable land, which in some districts has had such a bad effect upon the breeding of cattle, which are rapidly degenerating from stall-feeding. In Bankoora and Western Midnapore there is abundant pasturate, for much of which no rent is ever demanded. It cannot be said without longer enquiry than we have had time for what are the precise local customs in regard to pasturage in the jungle mehals, but it is obvious that to place all pasturate by one stroke of the pen under the same rules as arable land would be very dangerous. It might lead to unscrupulous zemindars at once imposing rents, and this would give rise to disturbances among the wild pastoral tribes. There can be no occupancy right in such lands as are used for pasturage, and there can be no power of acquiring any such. Especially in cases where (as in Messrs. Watson and Company's estates in Midnapore) forest conservancy has been introduced, and the cattle are no longer allowed to graze indiscriminately everywhere, much irritation has been caused, and to bring all such cases under the rent law would satisfy neither party. Cases of pasturage, forest rights, and fisheries should, I think, be left to be dealt with, if necessary, under a separate law.

120. Regarding the questions raised in paragraph 2 of the Government of India's letter, I have the honour to state that in respect of point (2) there are it appears a few such tenures in some districts, but that the opinion of myself and the Collectors in Conference is that no inconvenience has been experienced by zemindars from the present practice, and we do not think it advisable to subject such taluks to the summary sale procedure or to make them liable to pay to Government direct or in any way to alter the present old established and satisfactorily working state of affairs.

121. As regards point (3) we are of the same opinion. There is not the slightest necessity for introducing the summary sale law in this respect. Section 58 of the Bengal Cess Act, 1880, provides we think, all that is necessary. There is also great danger, as suggested by you that arrears might be purposely allowed to accumulate in order to bring the tenures to sale, which would be a greater evil than any that the landlords now complain of.

122. The Collectors have no records to shew all the curious varieties of tenure existing in their districts and did not think it advisabble to excite attention by setting on foot local enquiries to ascertain what tenures existed. It is known that there do exist, especially in the wilder parts of Midnapore and Bankoora, strange tenures of various sorts. We come upon then occasionally in the course of enquiries into other matters. The difficulty in dealing with these tenures by name would be that occasionally the same kind of tenure is known in different districts by different names; while on the other hand one name is used in different places to indicate two very different kinds of tenure For instance *utbandi*, as known in Midnapore, seems to be a very different thing from the custom or kind of tenure known by that name elsewhere. Until an exhaustive and correct list and description of all these tenures shall have been prepared, we think it would be better to leave them to be dealt with by the general provisions of section 217, which are quite comprehensive enough for the purpose.

123. The officers at the Conference are unanimously opposed to pre-emption being introduced into the Bill at all, thinking that it is not an indigenous custom, but one borrowed from Mahomedan law, and not in accordance with the general customs or ideas of the agricultural population.

124. We also think that the remarks made with regard to point (5) apply also to the so-called semi-tenures, and that the legislature is not at present in a position to define them with any degree of precision.

J. E. S. & others—Reg. No. 5201C—327—12-8-84.

No. 65, dated Chinsurah, the 18th September 1884.

Memo. by R. H. WILSON, Esq., Offg. Commissioner of the Burdwan Division.

COPY forwarded to the Secretary to the Government of Bengal, Revenue Department, in continuation of this office No. 480 of the 8th ultimo.

WHAT is now wanted is not as I understand a discussion of the merits of the provision of the whole Bill, but a discussion merely of the points suggested in the letter of A. P. MacDonnell, Esq., Officiating Secretary to the Government of Bengal, Revenue Department, to the Commissioners of Divisions.

Although I consider the Bill to be a most objectionable one in many respects, I shall still confine my remarks only to the points raised in the letter above referred to.

Paragraph 4 of the letter.

The definition of raiyat as given in columns 2 and 3 of section 5 of the Bill is not exhaustive. A ryot is defined to be a person who holds land immediately under a proprietor or immediately under a tenureholder. A proprietor is defined as a person or a number of persons owning an estate. The definition of "estate" as given in the Bill has, I think, the effect of excluding unregistered lakhiraj lands as well as Government khas lands from its meaning. I therefore consider the definition of the word "raiyat" as given in the Bill objectionable on the ground that it does not include holders under unregistered lakhirajdars and tenants in Government khas mehals. Why the cultivators in Government khas mehals should not acquire a right of occupancy in the same way as under landlords other than Government it is difficult to understand.

(*b*) The effect of the presumption mentioned in section 5, clause 5 of the Bill, would be to shift the onus from the tenant to the landlord.

Occupancy holdings comprising more than 100 bighas are very rare in this district, and therefore so far as this district is concerned, the presumption would not be very objectionable. But the case would be different as regards some of the districts of Eastern Bengal where occupancy holdings exceeding 100 bighas are common. So far as this district is concerned the presumption referred to would, I think, be a fair one with reference to the existing practise.

(*c*) The object of converting an occupancy raiyat who sublets half his holding into a tenureholder is, it has been said, two-fold.

Firstly, to discourage the purchase of occupancy holdings by money-lenders; and, secondly, where transfers were made, to afford protection from undue enhancement of rents to, and facilitate the acquisition of the right of occupancy by, the actual cultivators of the soil.

As regards the first mentioned object I am afraid that too much is now being made of the fear of money-lenders—most of them not being other than the well-to-do raiyats themselves. The conversion of the subletting occupancy holder into a tenureholder, as provided in section 37 of the Bill, would not, I think, have the desired effect of deterring money-lenders from purchasing rights of occupancy on the ground that it would expose them to being summarily dealt with for arrears of rents, whilst curtailing their power to deal summarily with the raiyats. A *mahajun* who has got money in hand can easily pay off the arrears, and therefore need not be afraid of a summary sale. He will not suffer much from the facts of the rents being realized from him soon after they are due. As for his not being able to deal summarily with raiyats, that is not a new thing Besides the interest which he will get from the tenant on the arrears would go to a certain extent to compensate him

But a very great practical difficulty will arise in determining who are to be considered money-lenders within the meaning of this Bill. In villages many of the money-lenders are no other than the well-to-do raiyats themselves. The word money-lenders ought therefore, it seems, to be defined in the Bill.

I am of opinion that the danger of the occupancy rights falling into the hands of the money-lenders has not at present assumed a shape to demand legislative interference. Besides, the existence of money-lenders is to a certain extent a necessity. To diminish in their eyes the value of the securities on which they could lend money would be to make them unwilling to advance a loan when a raiyat may urgently need it, and thus to increase ten times the difficulties of the latter.

The practical difficulty connected with the ascertainment and registration of subleases covering in the aggregrate half the holding would, I think, be likely of a character to render the success of the scheme doubtful. It will necessitate enquiries, and may cause litigation between the landlord and the tenant. The raiyat may not also like the trouble and expense attending the enquiry

I now come to chapter IV.

That the rule of 20 years' presumption embodied in section 64 of the Bill is certainly one of the most valuable presumptions in the interest of the raiyats admits of no doubt; but it cannot certainly be said that it throws on the landlord no greater burden of proof than he is ordinarily able to discharge. Few are the instances in which landlords can trace the ownership of the particular properties in their families from the date of the permanent settlement. Often they are purchasers in execution of decrees, or purchasers by private sale from persons who have purchased in execution of decrees. They are seldom in possession of papers which would enable them to shew that the tenures or holdings have not their origin from the date of the permanent settlement. That landlords in this district do as a matter of fact experience considerable difficulty in rebutting the 20 years' presmption, if unjustly

pleaded, is certain. But whether practically they have been in a good many instances losers on account of this presumption is somewhat doubtful, considering the fewness of the cases in which civil courts have thought it fit to enhance the rents of ordinary occupancy holdings in spite of the undoubted increase in the value of the produce.

Strictly speaking, it is upon the tenant that the burden ought to be thrown of proving that the holding can trace its origin from the date of the permanent settlement, and that its rent has not varied. But now that the raiyats have enjoyed the benefit of the 20 years' presumption for so many years, they ought not certainly to be deprived of it altogether. In the case of documents lapse of 30 years may justify a court in presuming their genuineness without any evidence, save that they have come from proper custody (see section 90, Evidence Act), the reason being the difficulty of proving a matter by oral evidence after such a long time. Similarly, it may be laid down that payment of rent at the same rate for 30 years may justify a presumption that the *jumma* is held at the same rate from the date of the permanent settlement.

CHAPTER V.

The definition of a settled raiyat, we are told, is no longer an open question for general discussion, but a definition more unfair or more disastrous to the interest of the landlords could hardly be conceived. The warmest and the staunchest advocates of the tenants' rights ought to be ashamed of going to the length the framers of the Bill have done in this respect. It is a most unjustifiable attempt to break through the pledge of the permanent settlement, to reduce the zemindars to the position of mere annuitants and to transfer the real proprietary right in the soil to the raiyats. To be consistent, the word zemindar (which means the lord of the soil) ought to be defined as a mere rent receiver with no real proprietary right to the land. Can any one who knows the real state of the country entertain the slightest doubt that the effect of this chapter of the Bill, if passed into law, would be to transfer the real proprietary right in the soil from the landlords to the tenants? Every raiyat who has held a piece of land continuously for 12 years in a village or estate would be a settled raiyat of that village or estate though the land so held may have been different at different times. Ninety-nine per cent. of the villagers owning lands would at once therefore, as soon as the Bill is passed into law, be converted into settled raiyats, and whatever lands they will hold they will have a right of occupancy to. The history of the administration of law for the last 15 years has shewn how very ineffectual are the provisions of law, at least as they are administered by our courts, so far as the enhancements of rents are concerned. Perhaps 4 per cent. of the cases are dismissed for some technical defect in the drafting of the notice, or what is called want of satisfactory proof of its service. Two cases of enhancement are hardly decreed in a district every year. Taking these facts into consideration, there could be no doubt that the effect of this chapter, if passed into law, would be a sort of legislative declaration of the proprietary right in the soil being with the raiyats. But I need not dilate on so clear a point further.

To shew that it would be proceeding too far to extend over an entire estate the capacity of a settled raiyat to hold on an occupancy title land into the possession of which he has been let, I need perhaps only to state them. One estate in the towji of the Burdwan Collectorate alone extends over more than perhaps one-fourth of this district, and also over portions of Bankoora, Beerbhoom, Midnapore, and Hooghly. It is let out to a large number of putnidars. To give a raiyat under one of these putnidars a right of occupancy from the very first day of the lease to whatever lands may be let out to him for the first time by a different putnidar would be very inequitable indeed.

The word estate ought therefore, in my opinion, to be expunged from section 26 of the Bill. The present law for the acquisition of the right of occupancy ought not, in my opinion, to be extended, and I certainly cannot understand how limiting the area of the estate within which a settled ryot can acquire a right of occupancy could be regarded as an injury to the "just rights" of a ryot. What just right could a ryot have to a piece of land situate miles away from his home and other lands? I should on the other hand think that to give a ryot from the very first day that certain lands are let out to him miles away from his home and other lands a right of occupancy therein, in spite of a contract to the contrary, and when no *bonus* is paid, is one of the strongest instances of injustice to the landlord which can be conceived.

Sections 28 *and* 29 (1)—Of the Bill, though not directly contradictory, are yet inconsistent in the principles involved therein. Strictly speaking both these sections ought not perhaps to find a place in the same Bill.

Where an occupancy ryot has purchased a share in the estate within which his holdings are situate, it is not fair to him that his right of occupancy to lands situate within that estate should cease, and that he should be a loser to the extent of the value of his occupancy holdings. There it no just reason why there should be this restriction on his power of purchasing a share of the estate, for such a provision will virtually amount to a restriction.

Section 31 (*b and g*).—I am of opinion that both the clauses ought to be retained in their present form. Subletting ought not to be discouraged. To do so would be to ruin a number of persons who have no other source of income. Suppose a ryot dies leaving an infant son or a widow. Not to allow such a person to sublet would lead to the land being kept uncultivated. There are many persons belonging to the middle class of society who have invested money in the purchase of occupancy rights, and subletting is their principal source of income. To discourage subletting would cause very great hardship to this class.

How a *mahajun* who has purchased a few *jumas* could be very exacting it is not very clear. If he demands for his lands a rate far higher than the prevailing rate, the only result would be that he would get no tenant. I think it is not difficult for a ryot to get lands at a fair rent in Bengal, and so it would be difficult for the *mahajun* to let out his lands at an exorbitant rate, even if he wishes.

As regards the grounds for the enhancement of the rent of occupancy holdings, the only thing that I need observe is that the last ground mentioned in section 18 of Act 8 of 1869 has been omitted when I think it should have been retained.

As regards the extent to which enhancements could be had, the provisions seem to me to be objectionable.

In some cases the extent to which enhancements could be had is limited to four annas per rupee in the rent previously payable, and in others to double the amount. To shew that such provisions are not fair, I need only say that, strange as it may appear, in Baboo's Bazar, a Government khas mehal situate in the town of Cuttack, the rent of a holding of the Maharani of Burdwan was enhanced from Rs. 6-8 to Rs. 68 and odd annas per year.

There is a distinction in the Bill between the extent to which enhancement could be had in court and the extent to which it could be had out of court. This distinction may often prove injurious to the interests of the ryots. Even when a tenant clearly sees that the landlord will be entitled to get a decree for enhancement at the rate of eight annas per rupee, and that it would be useless to contest, he will still be precluded from coming to an amicable settlement by the provisions of the law. He will, in addition to being made liable to enhancement as prayed for by the landlord, have to pay the costs of the suit and to dance attendance in courts. The distinction alluded to therefore ought to be done away with. Its effect would be to increase litigation. The ryots of a village are their mutual advisers. They can very easily obtain legal advice. It is a mistake to suppose that they are wholly without advisers, and cannot be trusted to know what is good for them and what is not. Enhancements are looked upon by the ryots as a serious matter, and they would seldom agree to it without consultation among themselves and with persons in whose judgment they trust.

As regards bastu lands there is no doubt that a higher rent is generally paid. I think these bastu lands ought not to be altogether exempted from enhancement, but every provision ought to be framed against landlords unduly enhancing the rent. Instances of ejectment of ryots from their homesteads are very rare in this country, and I believe instances of enhancement of the rent of bastus are not also very common.

Price currents for local markets, if properly made, would no doubt be of very great assistance to courts in determining questions of enhancements and abatement of rents. Provisions of the Bill on this point would be improvements upon the existing law.

Restrictions placed on the power of the occupancy ryot to sublet by section 38 of the Bill would not, I think, have any effect in checking the practice of subletting.

Power to make improvements, not inconsistent with the terms of the lease may well be given to ryots having occupancy rights. But a similar power to non-occupancy ryots except with express permission of the landlord is objectionable on many grounds. It would virtually give a tenant-at-will a right to the land against the consent of the landlord. Every landlord may not be able to pay for the improvements made by the tenant and so get back possession of the lands

There is not the least doubt that very great inconvenience is likely to result if measurements be made by the English instead of the local system of mensuration. It would be absolutely impossible for the ryots and villagers generally to follow the proceedings of the amin if the local system of mensuration be not adopted.

In conclusion I beg to state that although the present Bill is in some respects less objectionable than the preceding one, yet it would be better if it were dropped altogether. A few amendments in the present law here and there are all that is needed. To introduce such wholesale changes in the relations of landlords and tenants as is contemplated in the Bill is not desirable.

The effect of the Bill would be in many cases to introduce dissensions where there is at present peace and amity. The interests of both the landlords and tenants require that the Bill should be rejected, and I hope the Legislature will ultimately see the advisability of doing this.

The Bill is so very one sided from the beginning to the end that it hardly needs any argument to convince any impartial critic of the fact. If passed into law it would operate as a very great hardship on the zemindars, and deprive them of rights which they have justly enjoyed for centuries.

B. B. K.

No. 999G, dated Burdwan, the 9th September 1884.

Memo. by H. Fasson, Esq., Officiating Collector of Burdwan.

Forwarded in original to the Commissioner. Although sent in too late to be used in the Conference, the report, as conveying the opinions of the Dwaniraj of the Maharaja of Burdwan, cannot fail to be of interest.

J. E S.—Reg. No. 7130C—327—20-9-84.

NOTES ON THE BENGAL TENANCY BILL, 1884.

CHAPTER II.

Section 5 (1).—In order to make it clear that the mundals, aymadars, &c, who abound in this district and elsewhere, are henceforth to be regarded not as occupancy ryots but as tenureholders, something should, I think, be added to this clause.

It can hardly be said that a man who, some generations back, took land then unoccupied for the purpose of settling cultivators on it acquired from the proprietors "the right to collect rents," though his descendant at the present day may be as much a mere receiver of rents as if he were a putnidar. After the words "to collect rents" I would add the words "or to bring land under cultivation by establishing tenants upon it." So far as this district is concerned this is the most important point in the Bill, because on the recognition of their landlords as tenureholders depends the fate of thousands of hereditary cultivators who, under the law as it stands, are mere tenants-at-will. There need be the less hesitation in amending the law, because it is not in harmony with the prevailing opinion as to the equity of the case. It is only within the last few years that the unfortunate position of the tenants of mundals, aymadars, &c., has been made clear by judicial decision.

It is true that consideration is in equity and by custom due to the enterprising man who brings waste land under cultivation by settling ryots upon it; but his profits should be provided for not by lowering the status of the cultivators, but by moderating the demand of the proprietor to whose hitherto valueless land he has given a definite money value. The 10 per cent. to be given under section 7 (3) is not a maximum but a minimum, and the court which has to fix a chuckdar's or mundal's rent can take into consideration the money which he has spent and the difficulties which he has overcome.

Section 5 (4) (*c*).—The final sentence of this clause, for the reasons above stated, should run thus: "Whether it was a right to collect rents or to bring land under cultivation by establishing tenants upon it, or whether it was a right to cultivate land in the manner defined in clause (2)."

Section 5, *clause* (5).—Instead of establishing a presumption based on areas I would provide that when a tenant receives from undertenants rents equal to what he has to pay, it shall be presumed, till the contrary is proved, that he is a tenureholder—not a ryot. This deals with the essential difference between the two, and facts are much more easily ascertained regarding rents than regarding areas.

CHAPTER III.

So far as I have been able to ascertain tenures have in this district never as such been made the subject of enhancement suits, though in many cases intermediate tenants, who should certainly be classed as tenureholders, have been treated as occupancy ryots and subjected to enhancement accordingly. I am disposed to think that this would probably not have happened if the law had made any definite provision for enhancing the rents of tenureholders. Some such provisions as are contained in this chapter are required to bring the law into harmony with facts. There are only a few points on which I have any criticism to offer.

Section 6 (1) (*b*)—The words "that the lands are capable of affording it" are, I think, too vague. I would substitute the following words:—"That the rent receivable from tenants, together with the estimated yearly value of any land in the tenureholder's possession, or granted by him rent-free, or at a beneficial rent after deducting the cost of collection, exceeds by more than 10 per cent. the rent payable to the landlord."

Section 7 (3) (*c*).—I would omit the words "and risk." The introduction of this element of uncertainty could hardly fail to cause inconvenience and furnish matter for dispute. In settling estates with proprietors or others no allowance is made on this account.

Section 8.—To double a tenureholder's rent even in the course of five years might sometimes be a very harsh proceeding. Take the case of a tenureholder paying a rent of Rs. 400. His collections, when the tenure was created, were Rs. 500. They have now doubled and amount to Rs. 1,000. If the tenure is liable to enhancement, it may be *primâ facie* quite fair that the landlord should double his rent, claiming Rs. 800 instead of Rs. 400. But this would reduce the tenureholder's income from Rs. 600 to Rs. 200. To double a man's rent may often reduce his income to much less than half.

I see no necessity for protecting tenureholders in the same way or to the same extent as ryots, but should be inclined to fix 50 per cent. as the maximum of enhancement in section 8, and to add a provision like that of section 48 to the effect that the courts shall in no case decree an increase which appears to be unfair or inequitable. This will serve to indicate that no mere mechanical system of calculation is to be blindly followed.

CHAPTER IV.

In the Bolarampore Government estate an aymadar under the 20 years' presumption succeeded in establishing a right to hold a large area on a nominal rent of one rupee, though there is no reasonable doubt that for many years after the permanent settlement it was all uninhabited jungle.

No similar case has come to my knowledge, but no doubt they sometimes occur. On the other hand it must be recollected that if the presumption were limited to 20 years before

the new law comes into operation, it would yearly become more difficult, and ultimately it would be practically impossible for a ryot to establish his claim to hold at a fixed rate. It is easier for a zemindar than for a ryot to keep old papers I would not therefore change the present law on this point.

CHAPTER V.

Sections 25 *and* 26.—An estate may consist of a number of villages lying near together, and to such a case the provisions of these sections may be applicable. But in other cases it consist of—

(1) Several villages scattered throughout one district.
(2) Several villages in different districts.
(3) Part of one village.
(4) Parts of several villages.

Taking case (1) I do not think that it would be reasonable to give a ryot exceptional privileges in village B, because he has held land in another village A belonging to the same estate, but situated at a distance of 50 miles from B.

In cases (3) and (4) other difficulties arise. I omit complications regarding middlemen, and suppose that the ryot holds directly from the proprietor A ryot then of village A is a settled ryot throughout that village if he has held land in any part of it for 12 years, although part of it does not belong to his own landlord. Clearly therefore his privileges are inherent in his status as a permanent cultivating tenant of old standing, and are not derived from the payment of rent to one person or another. But if he takes up land in the adjoining village B the principle changes. He retains his privileges only if the land which he takes up in village B belongs to the same estate, or in other words pays rent to the same landlord as his old holding.

It may be said that this is a mere theoretic objection; but rules of law based on no self-consistent principle very often result in difficulty and confusion; and whatever may be the case in Behar, I am persuaded that in Bengal it would not be wise to allow a man to acquire privileges with respect to the land of one proprietor by occupying the land of another. Independently of the above consideration, it is very doubtful whether the proposed provisions would be of any practical use to the ryot for whose benefit they are intended. If a landlord has a vacant holding on his hands he will let it in the manner which is most to his own advantage and not to a privileged ryot. The result would therefore be that in consequence of his privileges the settled ryot would find it difficult to get a new holding without paying a premium. To escape from this effect of his privileges he would have to go outside the village or estate to which he belonged.

On the whole it seems to me that sections 25 and 26 must be altogether recast.

The present definition of a settled ryot appears to have originated in the suggestion made in paragraph 11 of the Secretary of State's despatch of 17th August 1882, which was necessarily made with imperfect information regarding the facts to be dealt with, and I fear that future difficulty and confusion will result if it is adhered to. The correspondence which followed shews that the Secretary of State was not willing to grant occupancy rights to all holders of ryoti land, but does not indicate that he regarded his own suggestion as being removed from discussion.

Section 31 (*f*).—I at one time supported the proposal to make occupancy rights saleable, but further experience and fuller consideration have led me to change my opinion. In this and many other districts such rights are already by custom saleable, or rather, to be more accurate, holdings protected by such rights are by custom saleable; and I know of no reason for interfering with the spontaneous growth of a custom whose existence proves it to be in accordance with the convenience of the parties concerned. In Behar and some other districts there is no such custom, and I would deprecate its forcible introduction. Those who know North Behar best seem to be generally of opinion that if occupancy rights could be sold they would in many cases pass out of the hands of the cultivators, and I do not think that any good likely to result from the provisions of this section would justify the Legislature in incurring the risk of such a serious evil. I write on the assumption that Bengal and Behar are to be treated alike. I would simply omit sub-section (*f*) of section 31, leaving the present state of things undisturbed.

Sections 32-36.—The statutory right of sale having gone, these provisions would, I presume, go with it.

Section 37.—The effect of this section would be twofold. It would improve the position of the undertenants by raising them from the status of under ryots to that of ryots, and it would bring the converted tenureholder within the scope of the summary procedure to be hereafter provided for the realization of rent from tenureholders. As regards the first of these two points it seems to me that whatever provisions may be required for the protection of under ryots should apply to the whole class, and should not be limited in their application to those who hold under ryots who have sublet more than half their holdings. As regards the second point I would suggest that if it be thought wise to apply the proposed summary procedure to any class of ryots this can be done by a direct provision of law to that effect without creating a class of tenants intermediate between an ordinary tenureholder and an occupancy ryot.

Section 38.—I do not understand clearly the purpose of this section. If there is no well defined object in view it might perhaps be omitted.

Sections 41, 44(*a*), 45(*b*).—The check on enhancement here provided is, I think, greatly preferable to one requiring for its application such a knowledge of gross outturn, cost of cultivation, and the like as can never really exist.

Section 48.—This provision cannot, I think, stand. A landlord with a vacant holding on his hands will let it to some one who offers the full market rate of rent. If a settled ryot will not pay this he will not get the land It is out of the power of the Legislature directly to fix the rate which land shall command in the market. This of course depends partly on the existing demand for land and partly on custom.

Sections 43 (*a*), 44.—As there are generally no rent rates properly so called, I would alter the words "prevailing rate payable" throughout those sections to "rents generally paid," and the words "rate of rent" to the word "rent."

Where there are no recognized prevailing rates of rent I do not think that the rents paid by neighbouring ryots can be accepted as conclusive evidence of what is fair and equitable.

I take it that in India as elsewhere a fair and equitable rent for an unprivileged ryot is such a rent as a solvent agriculturist free from the pressure of necessity might reasonably be expected to offer; or, what practically comes to the same thing, such a rent that the tenant of a moderate-sized holding could pay it and live in decent comfort. A fair rent for a privileged ryot falls below this to an extent determined by the nature of his customary or statutory privileges. If, as is said to be the case in some parts of Behar, the peasantry generally are only a few degrees above starvation point, the fact that they pay rent at a certain rate may be a *primâ facie* reason for supposing that such a rate is unfair and inequitable, but it cannot be a reason for concluding that it is fair and equitable.

Suits based on this ground of enhancement are very rare, and I can cite no instances in which such suits have resulted in hardship to ryots; but the provision made in section 44 (*b*) for a reference to revenue officers will greatly facilitate enhancement on this ground. I would add to section 44 another sub-section to the effect that the court shall not take the rents paid by any class of ryots in any neighbourhood as the basis of enhancement if it appears that they are in an impoverished condition. It would no doubt often, be difficult for a Judge sitting in court to estimate the validity of a plea of general impoverishment, but section 44 (*b*) removes this objection.

Section 45.—The hesitation of the Government of India with respect to this section is, I think, amply justified. If all kinds of crops grew on all kinds of soils, and if price lists could distinguish between permanent and temporary rises, there might be no objection to the proposed procedure, but neither of those suppositions is in accordance with the facts.

It is obvious that a rise in the price of produce justifies enhancement only if it is not due to failure of crops and if it is permanent. It is no gain to a ryot to get a higher price if he has less to sell, and no one could think it right to raise a ryot's rent with the prospect of his being entitled to a reduction within the next few years. Both these important considerations have been overlooked in framing this section.

Except where there has been some special cause at work, such as a new railway, canal, or road giving access to fresh markets, a merely local rise in prices is for the most part due to bad crops, either in the locality itself or in some other locality which it supplies. In the former case it cannot be taken as indicating increased profits from cultivation, while in the latter it can. No mechanical process of calculation can ever determine which is the true state of the case in any particular instance. Moreover, in either case such a local rise in prices could not be expected to last. A local rise in prices then must be carefully studied before it can be accepted as a legitimate ground of enhancement.

In the case of a general rise of prices it is equally easy to shew that no such mechanical process of calculation as this section contemplates can safely be relied upon. Any one who takes the trouble of examining old price lists will confess that it is not an easy thing to decide what quinquennial period in the past can equitably be taken as a standard of comparison; but I will assume that this difficulty has been surmounted, and that (say) 8 annas a maund—the average price of paddy in the years 1851-55—is to be our starting point. Since this there has probably been on the whole an upward tendency, but it has not been an uninterrupted progress. Two or three years of high prices have been followed by two or three years of abundant harvests and low prices Being anxious to enhance, I naturally wait for a favourable opportunity, when a famine in Madras or elsewhere makes an extraordinary demand on stocks already diminished by a couple of indifferent seasons, and prices have risen to a high figure. Now is the time for my suit, and instead of 8 annas a maund I can honestly prove that the prices of the last five years have been (say) 10 annas, 12 annas, one rupee, then two rupees, and last year one rupee eight annas. Thereupon the court, if it follows this section, will turn me out an average of close on 19 annas as the current price of paddy. Sub-section (*b*) no doubt stands in the way of a corresponding enhancement of rents; but it is obvious that a process which can give 136 per cent. instead of 20 or 25 per cent. will be capable, under other circumstances, of giving 25 per cent. instead of 10 per cent, or nothing at all. It may perhaps be said that in the supposed case the mistake lay in taking for comparison the period 1851-55. But the five years immediately preceding the suit must be taken as one of the two periods to be compared, and if these five years included a Madras famine, the court proceeding under this section could only arrive at a correct result by selecting for comparison some past quinquennial period, also including a famine as disastrous as the recent one.

Prices fluctuate so much from year to year and from period to period that from the comparison of carefully chosen periods almost any result could be worked out, and as the choice of one of the two lies with the plaintiff the game is in his hands.

Then, again, the court is not to look at the price of what the land in question produces, but at the price of staple food-grains. So the tenant of high land which produces mulberry or oilseeds or tobacco, and the Santal who extracts a crop of biri kalai out of a couple of inches of soil over the laterite must pay higher rents if this section be followed, because the cultivator of rice land gets a better price for his produce. It is not possible to calculate the rent-paying capacity of land which produces, say, castor, but could not produce paddy, from the price of paddy which grows on land incapable of producing castor.

Section 48 provides that no enhancement shall be decreed which appears under the circumstances of the case to be unfair and inequitable, and the courts would, no doubt, in time, discover and apply the limitations required to prevent injustice; but it seems to me much better that the law should be as far as possible complete in itself. Its principles, at all events, should cover all classes of cases.

In order then to diminish the chance of error likely to arise from mistaking a temporary fluctuation for a permanent rise in price the periods to be taken for comparison should not be quinquennial but decennial. Three bad seasons often come together, and they would not falsify the figures of ten years so much as those of five.

Then, it should be made clear that the price-lists of staple food-grains shall not be taken as a basis of enhancement in the case of land incapable of producing such grains. In such cases the prices of the crops which the land does or can produce should be alone considered. It would not do to presume the existence of a rise as calculated from the published price-lists leaving the ryot to rebut the presumption, because, while the zemindar would have an easy means of establishing his case, the practical difficulties in the way of the ryot would be very great.

Again, following the decisions of the High Court under the existing law, it should be clearly laid down that the court, while accepting a rise in published prices as *primâ facie* a valid ground of enhancement, shall not follow them blindly or mechanically, but shall be bound to satisfy itself that the increased average is not due to one or two exceptional years, and that the increase, if real, is not so far as can be judged due to exceptional failure of crops or other temporary causes.

With respect to the cost of cultivation also I think that some modification of section 45 is necessary. As different meanings have been sometimes given to the term "cost of cultivation," it seems best to put the matter in a form leaving no room for ambiguity. Of the crop which a ryot produces one part A goes to feed himself and his family; another part B pays for whatever necessaries and comforts he has to buy for domestic use; a third part C pays his rent; and a fourth part D pays for bullocks, ploughs, extra labour, and whatever else he has to spend in order to carry on his cultivation. At present A, I will suppose, is worth in rupees *l*, B is worth *m*, C is worth *n*, and D is worth *o*. If prices double, and he has to pay 2 *n* as rent and 2 *o* in the purchase and feed of bullocks, &c., this will not affect the amount of A, and will leave him for domestic purchases 2 *l*. His position therefore remains unchanged, if the rise in prices has been uniform in all directions. But it may well happen that the price of cattle or of labour has risen more than the price of food-grains, and it should, I think, be open to the ryot to shew that this has been the case, and to demand a deduction from the enhancement which strict rule of proportion would give.

In truth, however, I feel no doubt that the decision of the majority in the great rent case was wrong. If the words "fair and equitable rent" have any meaning at all they mean "such a rent as a solvent agriculturist free from the pressure of necessity might reasonably be expected to offer," and I see no reason for supposing that such a rent will always or generally be arrived at by any process of calculation from passed to current prices.

Section 46 (*c*).—I fear that the provisions of this sub-section would lead to difficulty and confusion. It would, I think, be better to omit the words "or likely to be caused" from sub-section (*b*) (1), and only to call on the ryot to pay for improvements after their benefits have reached him. This would apparently be more equitable as well as more convenient.

Section 52.—There are at present two sets of price-lists. One set for the sudder station and sub-divisional head quarters only is submitted by the Collector, and appears in the *Gazette*. Besides this a price-list for each thana is prepared by the police and sent to the Magistrate in whose office a complete list is compiled. These lists are of great use to a district officer who can question and test the accuracy of any figures to which his attention is called, but they are not so trustworthy that a court could safely make them the basis of a decree for enhancement.

In particular instances forming the subject of enquiry, I have not unfrequently detected errors. This is not at all to be wondered at. At a police-station when the day comes for preparing the list there may be no one present to prepare it, but a writer-constable, and even if there is an officer of higher grade present he may often be tempted to fill in the figures without sufficiently careful enquiry. Moreover, grain is sold in the local markets by measures which differ in size in different parts of the district, and there is plenty of room for error in reducing these various measures to standard seers. If published price-lists are to be made the basis of enhancement proceedings, they must be compiled afresh by some trustworthy officer not below the rank of a Sub-Deputy Collector. There would be no great

difficulty in compiling trustworthy lists of the wholesale prices of staple food-grain for the last 15 years for the sudder station and sub-divisional head-quarters, and one or two other principal marts in different parts of the district; but I could not undertake to procure correct figures for every thana.

I have pointed out with reference to section 45 the comparatively limited use which can equitably be made of published price lists, and as it is contrary to public policy to stimulate enhancement, especially in Behar, the expediency of publishing authoritative price-lists seems very doubtful.

The idea was, I believe, suggested by the use made of police price-lists in certain settlements under Act VIII (B C.) of 1879; but that Act is a harsh law passed *ex post facto* to remove the difficulties into which the revenue authorities had drifted in connection with certain settlements in this district, and the results arrived at in these cases have since been falsified by the facts. Act VIII (B.C.) of 1879, then, and its procedure should be regarded as a warning rather than an example.

Section 53.—I quite agree with Mr. Reynolds in thinking that when a rent in kind is commuted into a money rent, a considerable deduction should be made from the average money value of the rent in kind paid for the last ten years.

A ryot can pay a rent in kind, making no demand on his providence and self-control, the equivalent of which in money would be absolutely ruinous; and even the most provident tenant paying a uniform money rent is liable to be involved in debt by two or three indifferent harvests in succession.

It may be that commutation rates will be mainly based on the money rates paid by neighbouring ryots, but so far as the average value of the rent paid in kind is considered at all, it should be so considered as to give a true rather than a false idea of what the money rent should be. A clause should therefore be added to section 53 (4) (*b*) explaining that in deducing equivalent money rents from rents paid in kind a deduction should be made in consideration of the fact that with a fixed money rent the tenant alone bears the risk arising from vicissitudes of the seasons.

Here, too, as in enhancements under section 45, if the peasantry of any locality are in an impoverished condition, I think this fact should be taken into consideration with reference to sub-section 42 (*a*). It seems desirable also that the grounds on which a Collector or settlement officer may refuse an order of commutation, or at all events the class of considerations by which he is to be guided in passing or refusing such an order, should be specified.

CHAPTER VI.

It appears to me probable that this chapter will improve the position of the non-occupancy ryot, but it is difficult to foresee completely how the new provisions regarding five years' leases will practically work. In such matters theoretic speculations are seldom fully realised in fact. What usually happens is the unforeseen. To protect rights of spontaneous origin is safe. To create new ones is risky.

Section 62.—This section seems to call for amendment, because, as the rent which a ryot pays is a single lump sum, and is not distributed over the several plots of land included in his holding, there are generally no means of determining how much rent he pays for the land included in an under-ryot's holding. To the words "which he himself pays," the words "or than an occupancy ryot might fairly and equitably be required to pay" should apparently be added.

The above suggestion is made on the assumption that the proposed limit is to be placed on the rent payable by under-ryots; but I greatly doubt whether the attempt to do this will succeed. How the law will be evaded I cannot say, but that land which ryots can hold or sub-let as they choose, will, in one way or another, realise the market price, I feel no doubt. That the market price even in the case of under-ryots is to some extent fixed by custom rather than by independent individual competition is no doubt true. Thus a bhagjotedar in most parts of this district never pays either more or less than half the crop. But that fact does not affect the question whether the rent can be directly limited by law. The objection that a ryot holding at a privileged rate himself should not be required to sublet at a privileged rate is met by the change suggested above in the wording of this section.

So far as this district is concerned, if section 5 (1) is amended as suggested above, the question of the protection of under-ryots will lose much of its importance.

Section 67 (1).—I doubt very much whether it is wise to attempt to introduce the English practice of paying rent on fixed quarter days.

In the greater part of this district the Amli year prevails, and the following table shews the instalment (stated in annas) of rent which is at present payable each month. In fact, however, the monthly instalments are not paid or demanded, and it is only for the purpose of causing expense and annoyance to some ryot who opposes him that a zemindar ever sues for a monthly instalment. At or about the end of the year there is a fixed day called the punya, when the ryots are expected to pay in something on account of the new year just commencing. If before this time his rent for the past year has been all paid, a ryot has in most cases nothing to pay as interest on account of the instalments not having been punctually paid on the due dates. If any balance remains, interest is charged on it for the past year at an all-round rate, without considering for how many months it has been due. The way in which this rate is arrived at will appear from the table which follows. The monthly instalments are such that if interest at 12 per cent. be charged on each up to

the end of the year, the total interest on Rs. 100 amounts to Rs. 8-2-9. The all-round rate should then be 8·7 per cent. or a little more than 1¼ annas on a rupee, but the usual practice is to take it as 2 annas. In some cases by special agreement a higher rate than 1 per cent. a month, or 12 per cent. a year, is charged:—

Month.	Amount of instalment in annas.	Number of months on which interest is payable up to the end of the year.	Interest accruing up to the end of the year on each unpaid instalment of a total rent of Rs. 100 at 12 per cent. per annum.	Corresponding instalment of revenue.	Interest at 12 per cent on Rs. 100 up to the end of the year.
	Annas.		Rs A. P.		Rs. A. P.
Assin	½	12	0 6 0	5½	3 1 6
Kartick	1½	11	1 0 6		
Aughran	3½	10	2 3 0		
Pous	3½	9	1 15 6	7½	2 10 0
Magh	2	8	1 0 0		
Falgoon	2	7	0 14 0		
Choit	¾	6	0 4 6	1¾	0 3 9
Baisack	½	5	0 2 6		
Jeisto	½	4	0 2 0		
Assar	½	3	0 1 6	1¼	.....
Shraban	¼	2	0 1 0		
Bhadro	¼	1	0 0 3		
Total ...	16	.....	8 2 9	16	5 15 3

The effect of this section would of course depend to a great extent on the dates and instalments to be fixed by Government, but I will assume for the present that one day for payment would be fixed at or about the end of each quarter, and that the instalments would correspond with the instalments now fixed for the payment of revenue. Interest would then be payable on each instalment as shewn in the last column of the table.

Primâ facie then if the same rate of interest were charged the ryot would gain considerably from the proposed change. But it is tolerably certain that if fixed days of payment are prescribed by law, the indulgence at present generally granted to ryots who pay in full at any time within the year will no longer be granted. Interest will be charged on all sums not paid punctually on the due dates. I presume here that section 79 will be so interpreted as to allow of this, since otherwise it would be useless to fix quarter days, the ryots having no inducement to observe them. It is often difficult even for a moderately rented ryot to pay money punctually except at harvest time without borrowing (in which case he would certainly have to pay more than 12 per cent. interest), and consequently it is very doubtful whether the apparent gain to the ryot would not turn out to be a real loss. So far as the ryot is concerned, the only changes required in the present system are such as will prevent the institution of vexatious suits for monthly instalments, and the realization of excessive interest on arrears outstanding at the end of the year. The former evil might be stopped by the simple provision that no suit for the realization of the rent of any holding shall be entertained within three months from the institution of a previous suit for the realization of the rent of the same holding. With reference to the latter it might be sufficient to provide that in the absence of a registered agreement no court shall decree interest on a ryot's rent at a rate exceeding 12 per cent. for the period which has elapsed since the end of the year, on account of which the rent was payable. For the period within the year during which rent was due but unpaid, the courts might be empowered to decree at the option of the landlord either at the rate of 12 per cent. calculated in detail or at the all-round rate of 1¼ annas in the rupee. As the heavy instalments fall early in the year, this latter provision would be fair to the ryot wherever the Amli year prevails. Where the Bengali year prevails, and the heavy instalments come at the end of the year, the all-round rate of 1 anna might be sufficient. It is necessary to legalise the all-round rate in order to relieve landlords from the necessity of making troublesome calculation about petty amounts. Section 79 as it stands would be no sufficient check on the prevailing oppressive practice.

For the landlord it would no doubt be very convenient if he could realise his rent on certain fixed days with the same punctuality with which he has to pay his revenue. But except in the case of exceptionally moderate rents, such punctuality is, I fear, not always attainable. Wherever rents are taken in money, the risk of good and bad seasons falls on the ryot, who, not being for the most part a capitalist, can only pay his rent punctually in bad seasons with the aid of the much-abused but necessary village mahajun, unless his rent is so moderate, that even in bad seasons the produce of his holding is sufficient to pay his rent, as well as to maintain himself and his family.

Section 69 (1).—Landlords strongly object to this section, but it only states what is already settled law.

Section 75 (2).—It would be a difficult matter to comply with this section as it stands. Except in the case of estates which are now registered, and such tenures as may be registered hereafter, the Collector would have no means of knowing who the claimants were. In the case of numerous shareholders, some of whom lived out of the district, it would be troublesome and expensive to trace them out. The only re-

medy I can suggest is the publication of a little district gazette containing sale notifications, &c. Such a publication is greatly needed now, and would cost Government nothing; as, if properly utilised, it would be indispensable to all persons largely interested in land. I believe there is something of this kind in Madras.

CHAPTER IX.

Sections 87-93.—The provisions of these sections contemplate a state of things so different from what exists, or is likely to exist, under any circumstances which can be foreseen, that they should, I think, be omitted. It would be sufficient to provide that an ejected tenant shall be entitled to compensation for any improvement which, by custom or contract, he was at liberty to make. Section 194 might stand as it is.

Section 88.—The provisions of this section should be limited by the clause "In the absence of special agreement or proved custom to the contrary." It represents what are usually the rights of tenants of the class referred to, but in some cases the landlord advances grain, and makes a special agreement that the produce is to be stored in his khamar, and in such cases the dominion over the produce before division rests with the landlord.

Section 95 (1).—Some provision seems to be required here as in the case of ejectment with respect to the standing crop, as the Amli year ends at a time when the principal crop of the year is on the ground.

Section 99 (2).—The wording of this sub-section might, I think, be improved thus: "Without the consent of the tenant or the written permission of the Collector a landlord shall not be entitled to measure any land which has been measured during the ten years immediately preceding, either by himself or by any person whose successor in interest he is."

It should, I think, be made clear under what circumstances the Collector should give the permission above referred to.

Sections 102-109.—Cases in which disputes between joint owners endanger the public peace are not, I think, infrequent. The last prominent instance which has come under my notice is that of pergunnah Sildah in the west of this district, which for the last nine months has been in a disturbed state productive of much suffering and crime in consequence of disputes with respect to the management of the property between Messrs. Watson & Co. and the brothers Dutt. The one party holds 2 annas of the undivided property on a temporary lease, and the other holds 14 annas in putni. This case seems to suggest the expediency of slightly altering the wording of this section so as to include the case of persons in joint possession under different titles. It might run thus: "When two or more persons in possession of an estate or tenure, &c."

I see nothing to justify the Maharaja of Durbhunga's fear that a manager working under the Judge or the Court of Wards would be likely to neglect the interest of the proprietors. It is generally found that the management of the Court of Wards, though far from perfect, is much more successful than that of private proprietors, and, indeed it is to the Court's comparatively good management (from the landlord's point of view) of his own estate that the Maharaja owes a great part of the wealth which he now enjoys. The Court of Wards has often been accused, rightly or wrongly, of unduly neglecting the interests of ryots, but the opposite accusation is now brought for the first time.

It would not I think be advisable to limit by law the cost of management. Where, as in Orissa and Behar, ryots pay their rent through village headmen of one kind or another the cost of management may be kept very low. Where collections have to be made separately, from each individual ryot they are necessarily high. As the Court of Wards requires its servants to be content with their salaries, and refuses to countenance the exactions of various kinds which very generally contribute largely towards the maintenance of zemindari servants, the legitimate cost of management is no doubt comparatively high under the Court, but that is inevitable.

Sections 110-116.—The operation of these sections should, I think, be confined to those cases in which rents are to be settled. Except for the purpose of settling rents, neither landlords nor tenants will ever voluntarily incur the expense of such a costly process, nor is there any need for it in the public interest, the tendency of such enquiries being rather to stimulate than to allay strife. To call in question all doubtful titles could not possibly promote peace and harmony. In any case the solid results from such a proceeding must be very small, as it is out of the question to give finality to the result of a superficial enquiry necessarily often conducted in the absence of the persons interested.

In nine cases out of ten a ryot, whatever may be entered against his name, will think it best to keep quiet and see what happens. The landlord looking further ahead, and being in a better position for influencing ameens, will take care that the entries in which he is interested are made in accordance with his wishes. To the wilfully false entries thus made must be added the very considerable percentage of error due to carelessness and *bonâ fide* mistakes which the papers of a ryotwari settlement are always found to contain when tested by the process of collection. On the whole therefore the result of such an enquiry conducted independently of the settlement of rents would be too full of error to have much value.

With respect to the preparation of a general register of right by means of a cadastral survey of Bengal, I beg to refer to my note, dated 19th March 1884.

Sections 123-134.—I cannot but think that these sections should be omitted as being either useless or positively mischievous. If their provisions are never applied, it is clear that they will be useless. If on the other hand an attempt is made to apply them injustice and confusion must result.

The cultivated lands of this district all fall into one of two great classes—low-lying rice land and high land. But each of these classes is again sub-divided. Thus of rice lands there are four recognized kinds which are not of course sharply distinguished, and land of each kind may be of the first quality, second quality, or fifth quality. In some settlements as many as 16 qualities have been recognized and separately assessed. This is not necessary; but lands of the same kind differ so much in value that no table of rates could work fairly unless it recognized four or five qualities of land of each of the four kinds to which rice lands may belong. There must therefore be 16 or 20 rates for rice land alone. A settlement officer, who works more or less by constant compromises, may make use of such varying rates, but I do not think that any court could ascertain whether land in dispute should be considered sandy, loam or loamy sand, and whether if classed as loam it is of the fourth or fifth, if classed as sand of the first or second quality. A table only broadly dividing lands into a few great classes must necessarily be inequitable, while a table drawing minute distinctions could not be used with any degree of precision by a civil court, and must therefore work unjustly in practice. Moreover, the minute classification of lands according to their real value is, *pace* Bombay authorities, totally impossible.

A settlement officer can ascertain what rent land commands; when he goes beyond this he is on slippery ground.

Again, whose business is it to object when a table of rates is published? No actual holdings having been assessed, and no ryot having been informed whether the published rates, if applied to his holding, will raise his rent, it is not to be supposed that he will incur the trouble and expense of contesting rates which, so far as he or any one else knows, may not affect him in any way. Whether they affect him or not depends on the result of possible future litigation with respect to the classification of his land. It is not the habit of a Bengali peasant to enter upon troublesome and expensive litigation about matters which do not at present directly affect him, and may never affect him. The publication of the table of rates would therefore have no practical effect in the way of protecting ryots.

Section 125.—It has already been shewn with reference to section 45 that fair and equitable rents cannot be deduced by any mechanical process from the prices of stable food-grains, and the same arguments apply to section 125.

Section 131.—I feel bound again to urge the extreme danger of providing that tables of rates once published shall be unquestionable for a long term of years. Revenue officers have in past times mistaken a temporary for a permanent rise in prices, and the same thing may happen again.

CHAPTER XII.

Sections 135-138.—Disputes regarding the identity of khamar lands seldom or never occur here, and consequently this chapter has no practical interest in this district.

CHAPTER XIII.

Sections 139-158.—The right of distraint is little used or valued in this district, and I have not had sufficient experience of the working of the existing law on this subject to enable me to form a confident opinion regarding it.

CHAPTERS XIV AND XV.

I am not in a position to offer criticism of any value on most of the provisions of these chapters. So far as I can judge section 164 would work well.

CHAPTER XVI.

There are a few points in this chapter which call for notice.

Section 195.—Baisack is not the first day of the year where the Amli year prevails.

This section omits, probably through an oversight, the ten days' notice required by Regulation I of 1820, section 2(2).

Section 198.—It seldom happens that a tenant's objection can be disposed of before sale day. At present when on sale day an objection is found to be pending, the Collector requires the putnidar to deposit the amount claimed, and hears the objection afterwards. This procedure works well, and is in fact one of the principle things enabling the putni law to work so smoothly as it does.

The Bill changes all this. The objecting putnidar must either pay the zemindar's claim or allow his tenure to be sold. The only remedy apparently open to him is a suit to set aside the sale. Such a procedure as this would leave the tenant entirely in his landlord's power and could not work for a year without producing a crop of scandalous injustice. If it be thought necessary to get rid of the Collector's summary enquiry, then certain fresh provisions must be added.

Under section 205 any person aggrieved by a sale affected under cover of, but not in accordance with, the provisions of this chapter can sue for cancelment of the sale and for damages. But nothing is said about a sale effected in accordance with the provisions of this chapter for the realization of a claim found to be invalid. In such cases damages, not exceeding double the invalid claim, should be recoverable.

Further, if a putnidar to save his tenure from sale pays his landlord's claim, he should be entitled on proving the claim or any part of it to be invalid to recover in the civil court damages not exceeding double the amount of the invalid claim, besides recovering the amount wrongfully exacted.

Without some such provisions as these I have no hesitation in saying that this procedure, which has now worked smoothly for more than half a century, will become in its proposed form incapable of equitable working. The best course probably is to retain the Collector's summary enquiry.

Section 201 (5).—When the purchaser is the zemindar the present practice is to let him pay only the difference between his claim and the selling price. This is convenient and apparently unobjectionable.

Section 201 (6).—The time allowed for notifying re-sale, *i.e.* the afternoon of the eighth day only, is not sufficient. Re-sale should take place on the tenth day.

Section 203.—I see no reason for relieving the zemindar from the duty imposed on him by Regulation VIII of 1819, section 15, of letting the purchaser have access to the papers in his office regarding the tenure.

It should be made clear from what date the purchaser's possession is to be held to commence and the defaulter's to cease.

Section 207(*c*).—The sale being held in the Collector's office, the words "of the Collector" might be omitted.

Section 208.—If, as sometime happens, several days at the beginning of Kartick are close holidays, so that petitions under section 197 are several days late, it seems desirable that the sale should be postponed till a corresponding day in Aghran, the date before which notice must be served being similarly moved forward.

Section 209.—I see no reason why the proposed summary procedure should not be made applicable to the recovery of road and public works cess from rent-free tenureholders, nor does it seem necessary to exempt from it those dependent taluqs, which formerly paid revenue direct to Government. There are no such taluqs in this district.

CHAPTER XVII.

Section 212.—I do not understand what class of contracts this refers to. A large part of the tenures in some Bengal districts have arisen in speculative leases of waste lands for the purpose of reclamation, but no doubt this section will not touch them.

Section 215.—It should be made clear that a right of occupancy cannot be acquired by tenants of service tenureholders.

Section 216.—I do not think that anything more is necessary regarding bastu land. There is no custom in this district under which a ryot whose holding includes bastu land can retain this land when ejected from the rest of his holding. Such a custom would often be very inconvenient, as a landlord after ejecting a defaulting tenant would find it difficult to let the cultivated land without the bastu. The attachment of ryots for their homes may be played upon in more than one way by men bent on exploiting them. There was a well-known English zemindar in Nuddea, whose first step towards general enhancement of rents was to give his tenants separate mocurrari leases for their homesteads, his calculation (which proved to be correct) being that this firm hold on their bastu land would make them more unwilling to migrate, and therefore more squeezeable in respect of arable land.

Section 223.—Besides the powers specified in this section the revenue officer must have power to impose a daily fine for the non-production of papers. This is the only really effective method of compelling an unwilling person to produce papers, and it involves no hardship. When the person who has been called upon to produce papers at length makes up his mind to submit and produces them, the fine is generally remitted.

The forms of accounts and receipts given at the end of the Bill are not suited for general use. Probably no forms could be devised which would suit all districts. It should, I think, be entirely left to the executive Government to prescribe forms.

One or two questions raised by Government or the Select Committee could not be conveniently discussed in connection with any particular section of the Bill; they are therefore considered here.

Gradual raising of rent rate.—It is feared that if a landlord is allowed to let vacant holdings at whatever rent they fetch in the market, the result will be a gradual rise in rents generally, and consequently in the rates up to which enhancement will be possible under section 43 (*a*). For several reasons I do not think it advisable that an attempt should be made to check this. In the first place I feel sure that any attempt to prevent a landlord from realizing the market price for a vacant holding would be as ineffective as an attempt to fix the market price of bread. The market price in the case of land is influenced by custom as well as by individual competition, but this does not affect the question. In what particular way a law limiting such rents would be evaded I cannot say, but that it would fail of its object is, in my judgment, absolutely certain.

Then, again, the number of holdings which come into a zemindar's hands for re-letting is, at all events in this district, so small, that their rents could only very slowly affect the general average, and if rents are to be raised at all it is, I think, much better that it should be done gradually by such natural means than by a coarse and violent process founded on an attempt to calculate ideal rents by a mechanical process from inaccurate or inapplicable

statistics. In any case attempts to enhance on the ground of prevailing rates have hitherto been so rare and so unsuccessful that if the law affecting such suits were to remain unchanged this question would have little or no practical importance. Section 44 (*b*) enabling a court to call in the aid of a revenue officer will greatly facilitate enhancement on this ground, but on the other hand it will render possible the application as proposed above of the obviously equitable provision that when the ryots of any locality are found to be in an impoverished condition the rents generally paid there shall not be taken as the basis of enhancement.

It is not in section 44 but in section 45 that the real danger to the ryots lies. Indeed, if the latter section became law in its present form, it would be absolutely ruinous to them.

Mahajuns.—The necessity of doing something to diminish the influence of village mahajuns is another subject with regard to which some misapprehension seems to me to be prevalent. In the districts with which I am most familiar a rustic money-lender is generally a successful cultivator, and a cultivator, if he is successful and saves a little money, becomes almost as a matter of course a money-lender. Money and grain-lending and the purchase of additional land are pretty nearly the only investments open to him till he gets enough capital to deal on a large scale in grain or other country produce. If a man has 100 bighas of land, it is pretty certain *a priori* that he lends money or grain or both. I do not think that the people of this class are harder landlords than their neighbours, and in any case it is certain that whatever laws we may pass the provident will continue to transfer to themselves the property of the improvident in rural Bengal as in all other human communities.

Capitalists from the towns who, like all other capitalists in this country are also money-lenders, buy up estates, putnis, and other large tenures when they come into the market, but not occupancy holdings. Whether the case is different in Behar I do not know.

Irrigation channel.—Act III (B.C.) of 1876, part 5, provides for the construction of village irrigation channels by proprietors. In this district such channels are constructed by the officers of Government. In either case whatever land is required besides what is voluntarily given is taken up under the Land Acquisition Act I have recently proposed a simplification of the land acquisition procedure to suit such petty cases. Nothing further seems to be necessary.

R. H. WILSON,

MIDNAPORE,
July 1st, 1884.

Proposed field survey of Bengal.

(1) The object of the revenue survey of Bengal was to secure the land revenue by identifying and recording the lands comprised in each revenue-paying estate and revenue-free holding. It was therefore only concerned with the external boundaries of the villages comprised in each estate except where two or more estates or parts of estates are comprised in one village, in which case the boundaries of the several estates or parts of estates within the village had to be demarcated and surveyed. In those districts in which village communities in the Indian sense never existed, and in which an estate does not usually consist of a certain number of villages, the so-called village of the survey is, I believe, merely a block of convenient size, more or less arbitrarily taken, and in such districts the object was the demarcation and survey of estates and revenue-free holdings within the village boundaries.

(2) In such a survey the non-professional party goes ahead, demarcates and marks the boundaries, settles boundary disputes, computes areas, and thus collects materials for the register of villages and estates. The professional party which follows checks the non-professional work so far as the external boundaries of villages are concerned, calculates the areas of villages, and compiles a general map from the several village maps. The areas of entire villages as calculated by the professional party serve as a check upon the interior details, if any, given in the registers of the non-professional party. When there is any serious discrepancy the estates or parts of estates within the village, with reference to which the discrepancy occurs, have to be measured afresh.

(3) So far then as village boundaries are concerned the maps of the revenue survey would, I think, form a secure basis for the work of a field survey. They can easily be enlarged to any required scale, and it will remain to fill in the details. In spite of the absence of boundary pillars there is seldom or never any real difficulty in identifying in the field the boundaries shewn in village maps.

(4) The detailed survey should, I think, be made by the plane table method, rather than with chain and compass, as in this way more accurate results are secured with less trouble. The work being very simple there would be no need of expensive professional agency. In fact as explained in paragraph 8 below, it would be difficult if not impossible to separate the survey and settlement operations.

(5) It may be well to notice here a mistake which is sometimes made. The fact being admitted that detailed surveys made in the course of ryotwari settlements, batwara proceedings, and the like are often found to be untrustworthy, it is assumed that this is due to want of skill on the part of the surveyors, and on this assumption it is proposed to remedy the evil by providing instruction in the art of surveying. As a matter of fact, however, all the skill which a native surveyor requires can be readily acquired in a week or ten days by any man of ordinary intelligence, and the defects found to be common in the work of men of this class are due not to want of skill, but to laziness and want of honesty. A man employed on a low salary and without adequate supervision in work directly affecting the interests of various persons has unusual facilities for profitable dishonesty, and if he gives way to temptation, it is not surprising. The measuring of land is as easy in Bengal as elsewhere, and all that is necessary in order to secure correct results is adequate supervision.

(6) I now come to the record of rights which would have to be prepared in the following way. The lands of a village being surveyed in detail, the field book or chitta would shew against each field amongst other things the name of the cultivating ryot, the amount of his rent, and the person to whom it was payable, information being obtained by local enquiry. From the chitta the khatian is prepared, which bears to the chitta the same relation which a ledger bears to a day book. In the khatian a page is devoted to each cultivator, and against his name are given various particulars regarding each field which he cultivates. Amongst the particulars would be the rent paid, and the person to whom it is payable. Each rent receiver's name would then head another page containing full particulars regarding all his property in the village. By following up and entering in this way all the persons interested in the lands of each cultivator till the proprietor was reached, it is obvious that a complete record would be made of all existing rights in the lands of each village. This with an index at the beginning is the form in which records of rights are in Bengal usually prepared, and I do not think that it can be altered with advantage. Of course all the information required need not be collected in the precise order indicated. To do this would waste time. Tenureholders known to be interested in a village under survey would be called upon for information without waiting till the records regarding tenants of an inferior class were complete. But the method of the proceeding is as I have stated.

(7) In theory then the preparation of a record of rights would be almost as simple a matter as a field survey, but in reality the practical difficulties would be very considerable. Every one concerned being hostile to the whole proceeding, no one would be very ready to give correct information. The general feeling in such cases is that if there must be a survey it is advisable to cripple its power for evil by supplying as many erroneous or distorted facts as may be. The statements of landlords and tenants regarding rents and rights will not be found to agree, and it will not always be easy to decide which is right. When, as must often happen, the ryot is not present, having perhaps gone away for harvest work to another district, the influence of the zemindar will often secure a false record regarding his rent. Mistakes arising in this and other ways generally come to light in a Government estate when the process of rent collection begins. But there will be no such check on the accuracy

of a general record of rights, and I fear that when all is said and done any such general record will contain a very considerable percentage of erroneous entries. With respect to tenureholders who generally have written title deeds, it would, I think, be possible in the end to secure correct information, though the process of summoning, and fining, and issuing distress warrants would be long and troublesome.

(8) As the record of rights must be to a great extent compiled in the course of the survey, and as the plots to be surveyed must be demarcated by a revenue officer, I do not see how the two parts of the work could very well be separated. The survey and the preparation of the record of rights must, I think, go together.

(9) It is difficult to form an estimate of the probable cost of the proposed operations without knowing to what amount of strife and litigation they will give rise during their progress; what amount of error the records as first prepared will be found to contain, and how long the process of revision will occupy. Assuming, however, that everything went on smoothly, I would roughly calculate the cost as follows:—

A Sub-Deputy Collector with the aid of three peshkars or head surveyors could supervise the work of 30 surveyors with a corresponding staff of computors and mohuris, and the annual cost of such an establishment would be about Rs. 22,000. Over three such parties a Deputy Collector would be required costing with his establishment about Rs. 6,500 a year. A Deputy Collector with three Sub-Deputy Collectors' parties, including in all 90 amins, would therefore cost about Rs. 72,500 a year. They could not work in the field more than six months in the year, and 250 acres would under the circumstances be a liberal estimate of the monthly outturn of work from each amin. At this rate three Deputy Collectors' parties costing, with the supervising Deputy Collector and his staff, Rs. 72,500, would complete in a year 210 square miles.

The cost would therefore be at the rate of about Rs. 345 per square mile; and in order to complete the survey of Bengal in 30 years, if the area be taken as 100,000 square miles, it would be necessary to employ 15 parties, each supervised by a Deputy Collector and three Sub-Deputy Collectors, at a total annual cost of Rs. 10,87,500. This would be the cost if everything worked smoothly. It will be seen that my estimate though framed in a different way agrees pretty nearly with Mr. Bernard's estimate.

(10) The proposed operations would be of no permanent value without the means of correcting the records and keeping them up to date, and I do not think that it would be wise to enter upon a project involving the expenditure of nearly four crores of rupees without considering how the record of rights is to be kept up to date, and what the annual cost of keeping it up would be. This is the more necessary, as, to prevent the confusion which must result from the accumulation of arrears, the process of correction should follow closely on the preparation of the original record.

(11) How then is the record of rights to be revised and kept up to date? The amount of work involved in respect of transfers and leases alone may be to some extent estimated by referring to the statistical returns of the Registration Department which shew that 134,250 transfers and 19,519 leases were registered in the year 1882-83. If the survey of any district were complete it might be possible to require the survey numbers to be given in all leases and transfer deeds. The registry office could then furnish the survey office with the needful particulars regarding all registered transactions. This would be troublesome and expensive, and a considerable permanent staff would be required in the survey office, but if money be no object the thing could be done. It must be remembered, however, that long before the survey and record of rights for any district was complete, and before therefore the mention of survey numbers in documents relating to land could be made compulsory, a considerable number of changes would have occurred, and consequently there would be much difficulty in bringing the entries up to date.

(12) With respect to the numerous transactions which are not registered, including enhancements, it will probably be suggested that the necessary information should be collected by means of putwaris. But the cost of this would be very great. If any reliance is to be placed on a putwari's papers he must have a decent salary, and it can hardly be thought that Rs. 10 a month—the lowest pay of a mohurir—would be too large an amount to give in order to raise him above the temptations which would surround him. Now there are in Bengal 248,706 villages, and if the odd 48,706 be omitted as uninhabited a putwari on Rs. 10 a month in each of the remaining 200,000 would cost in all Rs. 2,40,00,000 a year or nearly two and a half crores of rupees. I take no account of the cost of the establishment, which would be required in each district for the purpose of arranging and entering in the records the information supplied by putwaris, nor is it necessary to discuss here the percentage of dishonest or otherwise erroneous entries likely to be found in a putwari's papers. Who would bear the cost I know not, but whether the money is to come from Government or from the zemindars, I would suggest that this large income, if really available from any source, should be devoted to the rapid construction of railways, canals, and roads, as large public works of this class are in my judgment likely to be more useful than putwaris. If applied to the formation of a sinking fund it would extinguish the Indian public debt within the lifetime of persons now living.

(13) On the whole, for reasons which will be apparent from the preceding paragraphs, I do not think it expedient to undertake a field survey of Bengal.

MIDNAPORE,
March 19th, 1884.

R. H. WILSON.

J. F. S.—Reg No. 6342C—327—4-9-84.

No. 17RL, dated Calcutta, the 28th July 1884.

From—A. SMITH, Esq., Commissioner of the Presidency Division,

To—The Secretary to the Government of Bengal, Revenue Department.

WITH reference to your Circular No. 3T—R of the 24th May last, we have the honour to submit the following report after holding the conference on the subject of the new Draft Tenancy Bill directed therein.

2. We met for the purpose of considering the Bill on the 14th, 15th, 16th, 17th and 18th July.

3. We considered first the questions put in paragraph 2 of the letter of the Government of India. With regard to the first point, works of irrigation on any large scale do not exist, and are not called for in the districts of this division. The question put is not therefore of particular importance. here; where works on a large scale are wanted, Act III (B.C.) of 1876 enables Government to carry them out, and in Behar and Orissa the Act is applied. Of smaller irrigation works affecting individual estates, and which may therefore be regarded as works to be dealt with by the landlord and tenants thereof, we have had little experience. We would be disinclined to admit interference in such cases except on the application of the parties; even on such application there are difficulties in the way of requiring a landlord to undertake works of the financial success of which he may be uncertain, and of the means of executing which he may not be at the time possessed. If improvements are made on the application of either landlord or tenant, and opposed by the other of the two parties, the first cost of this work, is admitted, should be advanced, and the rest should be borne by the party applying, and he should receive such a share of the profits as will fully compensate him The subject is dealt with in the Bill, and beyond the remarks which will be hereafter made on the proposals, our experience does not enable us to make any useful suggestions.

4. On the second question, viz. the applicability of the summary sale procedure to the realization of the revenue of the shamila talooks, or talooks settled direct with Government, but paying revenue through the zemindar, we see no objection to the proposal, provided the zemindar applies and has the talook registered in a public register as one to which the procedure shall apply. It is but just to the zemindars, who have to pay the Government revenue punctually, that they should receive their fixed demands punctually. So far, however, as our experience goes, zemindars have not felt much difficulty in realizing the rents of such talooks, and we do not consider the question of much importance.

On the third question, viz. the proposal to apply the putni sale procedure to the realization of cess from rent-free tenure-holders, it was felt that the question is one of cess law rather than of rent law. The rate at which the cesses are levied is variable, and thus the amount of the cesses payable by any particular tenure varies. This element of uncertainty makes the expediency of applying so stringent a procedure as the Putni Sale Act doubtful. The small proportion that the arrears ordinarily bear to the value of the tenure was also felt as an argument in the same direction. Opinions on the point were divided: Messrs. Stevens and Tayler being inclined to answer the enquiry in the affirmative, and the rest in the negative.

5. On the subject of bastu lands which are not part of an occupancy holding to which reference is made in clause 4, paragraph 2 of the letter of the Government of India, and in paragraph 14 of your letter under reply, we think that the conditions, where not regulated by contract, should be governed by custom. So far as our experience goes, it is not the rule that homestead lands are raised at the ryot's sole expense; when, however, that is the case, we think the rent should not be enhancible above the highest rates chargeable for arable lands. Custom deals leniently with such lands, and we recommend that it be followed. We are not disposed to recommend that enhancement of rents in respect of them be absolutely prohibited. The information that has been collected on the subject of the customs is not very full. The Sub-Divisional Officer of Baraset makes the following remarks:—

"At present there is no substantive legislative enactment on the subject of bastu lands not forming part of an occupancy tenure. From enquiries made of pleaders enjoying large practice in the civil courts here, I learn that bastu lands not included in occupancy tenures are generally held to be transferable by the custom of this part of the country, especially in cases where the homestead lands have been in the possession of a ryot's family for more than one generation. These lands are held as a rule at fixed rents, and suits for enhancement in respect of them have occurred very rarely. Suits for ejectment of tenants from bastu lands are brought occasionally in the civil courts here. and when the tenant can show that he had been in peaceful possession of the same for 30 to 35 years, the onus lay fully on the landlord to show that the tenant has no permanent transferable interest in the tenure. The well-known cases of Banimadhub Banerjee *versus* Joy Krishna Mookerjee and others, and of Durga Prosad Misser *versus* Brindabun Sukul, reported respectively at pages 152-59 and at pages 159-64, Bengal Law Reports, volume 7, lay down the principles that ought to be adopted in the determination of the rights of a ryot in homestead lands. The tendency of the Case Law on this subject is to protect the interests of ryots of homestead lands, and the Legislature will do well to condense the principles inculcated in those rulings, with some improvements, into definite provisions to be embodied in the proposed Rent Law. I think, however, that, where the tenant enters into special contract with the zemindar to give up his lands whenever required, he should not be allowed to take advantage of any provisions that may be introduced into the new law."

Baboo Hem Chunder Ker, Deputy Collector of the 24-Pergunnahs, makes the following observations:—

"With regard to the fourth enquiry of the Government of India, I have been told that in former times, or rather at the time of the Decennial Settlement, 'bastu land' was separately recorded in papers as 'ryoti land,' while arable land was recorded as tieca. My reply to the query, whether any provisions are required with respect to tenants of bastu lands, which is not a part of an occupancy holding, will be in the affirmative. Such lands, when held separately from his arable lands, unless held under any written special contract, should not only be exempted from enhancement, but that its holder should not ordinarily be evicted. This is the present practice, and is generally followed by considerate landlords in respect of good and non-troublesome ryots. Lands taken for the purposes of homestead, and used as such, is so protected. Such, however, is not the case when they form a part and parcel of a holding containing land used for the purposes of cultivation. But even then, if the tenure for some reason or other is lost to the ryot, a considerate landlord, while settling the major portion of such holding with another tenant (it is needless to say that in all cases where land is sold by auction it is the landlord who as a rule buys it), permits the old ryot to retain his house, and in addition to it, grants him a small quantity of land for his support. In the matter of private sales, the seller scarcely parts with his cheeta; the homestead land of the occupancy and non-occupancy ryot is alike treated with consideration, although the older a ryot is, the greater is the consideration shown to him. I do not think that the remarks of the Government, that successive enhancements of rates payable for homestead lands is the screw applied for raising rents in districts where there is a large quantity of waste lands or a demand for tenants, apply to the 24-Pergunnahs district. In respect of the ryots of the hal hasili ryots' lands, the policy of the zemindar is to encourage the tenantry to improve the soil, though he takes care that they do not acquire a right of occupancy. In respect of the hal hasili land, the rate in respect of bastu land is not generally successive, especially when the lands are held under a rusadi jumma."

6. Mr. Stevens, in summing up the views of his Deputy Collector as given above, says:—

"The view which I am inclined to take is that there is but little disposition to treat the ryots unfairly regarding homestead lands, and that the form of pressure said in the letter of the Government of Bengal to be sometimes used to compel ryots to agree to enhancements is not used in this district. I think, however, that it would be well to assimilate generally the terms of holdings of bastu land to those of agricultural lands."

7. The information so given verbally by the Collectors of the other districts supported the inference that the conclusion Mr. Stevens draws in respect of the 24-Pergunnahs is equally applicable to their charges. At the same time it did not appear to us that the information was sufficient to warrant any further recommendation than that which we have made.

8. We have no doubt that whatever conditions are enacted with reference to the utbundee and hal hasili tenures should be extended to other similar tenures. It is not, however, possible, on the information we possess, to give a list of such tenures, and we think it would be better to give a description of them in the Act, and leave the courts to apply the provisions to tenures answering to the description. Tenures corresponding with the utbundee tenures of Nuddea and Backergunge are known in various parts of the 24-Pergunnahs by other names, such as tiecas, khorfa tiecas and gantees, and some of these names again designate tenures of very different characters in other parts of the division. We cannot give at present an exhaustive list, and one cannot be prepared without detailed enquiry. It would be necessary in such a list to give not merely the name, but also the locality.

9. We are not inclined to recommend that the zemindar should be deprived of a right of pre-emption in respect of any transferable rights of occupancy. Mr. Barrow, who has had experience of guzashta tenures, however, tells us that these tenures are not mere occupancy tenures, but are tenures held at a fixed rent.

10. With regard to paragraph 7, clause 2 of the Government of India's letter, we have no reason to doubt that the present price-lists published by Government are fairly accurate statements of what they profess to show, viz. the retail or wholesale prices at the special localities to which they refer, these being generally the head-quarters of districts or sub-divisions. These figures do not actually represent the prices the ryots obtain for their produce, nor would the price currents of local markets do that. These prices are to be got from the books of the mahajuns who purchase from the ryots. In the settlement of Khoordah in Pooree, it was found possible to get such lists. No doubt, when the purpose for which they are wanted is known, there is danger that accounts may be prepared for the occasion. This happened in Pooree, when fresh enquiries with a view to test the original figures were made. Such frauds can, however, be more or less checked by the published price-list. The retail prices at head-quarters necessarily differ from the prices at which the mahajun buys from the ryot, by reason of cost of conveyance, trader's profits, and casual fluctuations of supply and demand. Nevertheless there is necessarily between the two sets of figures a sort of rough proportion, which permits of the one being used to check the other. The existence of this rough proportion renders it possible to use the fluctuations in the price-lists as a rough indication of the fluctuations in the price the ryot receives for his produce. We do not think that this price alone can be considered in determining the rates of rent. There are no doubt cases where the fluctuations in the other elements are

not so material but that they may be left out of consideration. This was the case in the Khoordah Settlement. High prices necessarily follow short crops. If the short crops are on the land, the rent of which is being considered, the high prices will be counterbalanced by the short crops, and there may be little, if any, variation in the ryot's profits. On the other hand, if the high prices result from short crops elsewhere, they increase the rent-paying power. Taking a series of years, it may be assumed that land has yielded through them an average crop, and if prices have been high, it may be considered that, putting out of consideration other elements, the ryot's profits have been high. They have probably been indeed somewhat higher than the proportion would indicate, for high prices of food tend to decrease the wages of labour by driving men into the labour market who would not be required to labour if food were cheap; cheap prices tend to exactly the opposite result. We think therefore that the cost of production cannot be properly omitted altogether in considering what is a fair rent. We think too that the nature of the crops the land ordinarily produces should be taken into consideration, and that the fluctuations in the prices of those crops should not be omitted from the calculation. In respect of land that will yield valuable crops, such as pân leaf, betelnut, and the like, the profits yielded by those crops should be an element in determining the rent where it is not regulated by contract.

11. We think that the definition of an estate in section 3 of the draft Bill is insufficient. It does not include an unregistered lakhraj. Many small estates of this nature have been deliberately exempted from registration by reason of the trouble and expense involved being incommensurate with the value of the properties. We would therefore add, after the word "included" in line one of the definition, the words "or liable to be included."

12. In the definition of ryot, section 52, the majority of us, in order to bring private thatching-grass lands and the like under the provision applicable to the ryot, would add after the words "cultivating it" the words "gathering the produce;" Messrs. Barton and Barrow, thinking the case of the lands in question sufficiently met by section 227, would leave the clause as it stands.

13. Mr. Barton considers section 5, paragraph 5, unjust to the superior landlords. The rest of us are in favour of its retention.

14. The special limitation on the enhancement of a tenure-holder, provided by section 8, we would all strike out. Mr. Barrow mentioned to us a case where the rent of a tenure had been advanced from Rs. 186 to Rs. 2,700 on suit. He was not able to give the particulars, but we are satisfied that a limit of the nature proposed would work unfavourably. Tenures are frequently created at low rent for the reclamation of waste, and with a distinct understanding that from time to time, as reclamation proceeds, the superior tenant shall obtain a due proportion of the assets. In such a case, as well as in other cases, the proposed limit would operate inequitably, and we think the other restrictions sufficient. We would also strike out the corresponding restrictions in sections 44(*a*), 45(*b*), 47(*b*), and 47(*c*) on the enhancement of the rent of occupancy ryots. We think that all these sections would operate unfairly towards the landlord. We have, however, no objections to the provision making enhanced rent progressive, and would make it so within reasonable limits in cases where the enhancement would exceed the limits, the removal of which we suggest.

15. We are of opinion that the proposal in section 37 to convert an occupancy ryot who sub-lets more than half his holding on registration in a public register is not workable. The enormous difficulty that has been experienced in the registration of estates, and the necessity that has been felt for exempting the smaller lakhraj estates from registration, convince us that the registration of tenures would be a work of enormous difficulty, and we feel so doubtful of its being possible to effect such registration that we can hardly consider feasible any scheme that rests on it. The section gives no indication as to who is to move for such registration. Is it to be the occupancy ryot, who in all probability has no design to become a tenure-holder with a liability for summary sale under the proposed section 209? Will the application be made by the superior landlord, who may have no knowledge of the sub-lease, or by the lessee, who has probably no desire to be on bad terms with his lessor? We do not think it would be practicable to secure registration. Further, the question as to the proportion of the tenure sub-let would be prolific of dispute. We think the proposal inexpedient in any case, and the inexpediency is increased if the restriction of sub-leasing to seven years, as provided by section 38, is maintained. We do not, however, think section 38 of any practical benefit, and we would therefore strike it out as involving a useless restriction.

16. With reference to paragraph 7 of the letter of the Government of India, questions with reference to the presumption as to rent being fixed arising from 20 years' proved payment at the same rate, now rarely come before the revenue courts. We think, however, that the presumption should be maintained. We have already indicated that we consider the proposal to register such tenancies one of such enormous magnitude and difficulty that we doubt the expediency of attempting it. The proposal contained in section 122 of the Act to bar the plea, where there has been a record of rights or a settlement, appears to us reasonable, subject to the modification we hereafter suggest in respect of section 116. The character of the tenure should be determined and recorded in the proceedings.

17. With reference to paragraph 8 of the letter of the Government of India, and paragraph 7 of your letter under reply, we do not think that a ryot should acquire a right of occupancy in the land of one estate because he happens to have such a right in another estate, even if the two estates are in one village, and that the village in which the ryot

resides To some of us it appears doubtful if a ryot should acquire a right of occupancy in new land by reason of his having such a right in other lands. It appears to us to be certain that, if a non-occupancy ryot is to be admitted to engage for vacant land at the market rate (section 5*b*), and a settled ryot cannot be asked to pay more than one-fourth in excess of the rent paid by the previous tenant, the settled ryot's chance of getting new land is small, whereas competition will secure a higher rate than that which the proposed law allows him to pay. The circumstances which have led to the proposal to convert the occupancy ryot of the old law into the settled ryot of the draft pertain to another part of the province, and our experience of them is small; still, as I have said, some of us doubt the expediency of allowing a right of occupancy in any land other than that in which it has been acquired by possession. If the status of a settled ryot is to be conferred in lands not held, we would not allow it to extend to estates separated by partition from that in which the land in which the occupancy right exists is situated before the passing of the Act. The Select Committee has in the draft allowed the zemindars to receive from a non-occupancy applicant for vacant land the full market rate. We think this is fairly due to the zemindar in whom the property in the soil was formally declared to be vested by the preamble of Regulation II of 1793. It seems to us to be reasonable that the landlord in whom the property in the soil is vested, and who is responsible for the Government revenue, should be allowed to dispose of vacant lands on the most favourable terms he can obtain; and we see no reason why a person seeking lands for the first time should obtain it at less than the market rate, any more than he would be able to obtain any other article. We would require a non-occupancy ryot seeking new land to enter on the same terms. As we have above indicated, he is not likely to obtain land on less favourable terms, and the draft section intended for his benefit will only operate to his injury. We recognize that the effect of this will be gradually to raise the rents of occupancy ryots as the market rates increased above those they pay; but we do not think it unreasonable that this liability should attach to the occupancy tenure.

18. With reference to the Government of India, paragraph 9 and section 26—2, the ryot who asserts a special privilege should, we think, be required to prove it. We do not see why the ordinary rule should be altered in favour of the ryot and against the zemindar.

19. We would allow the zemindar the same right of pre-emption against a gift or bequest to other than heirs (section 35), that is allowed in the case of sale, the value being in this case determined by arbitration; we would require notice to be given before registration. Mr. Barton would empower the landlords to give or withhold consent in all cases of gift or transfer, and would not allow bequest to others than the heirs at law.

20. Referring to the enquiry in paragraph 7 of your letter under reply, we think the position of a ryot, who is only a joint shareholder in the superior tenure, differs from that of one who is entire landlord. The objections to allowing the latter to acquire a right of occupancy in land held in the tenure apply with less force to the latter, and we would allow section 29-1 to stand.

21. With reference to paragraph 9 of your letter under reply, the subject of enhancement has been already noticed in paragraphs 10 and 14 above. We think it inexpedient, sections 41 and 43, to have different limits to enhancement by agreement and by suit. If the rates that may be fixed by suit are fair, there is no reason why the parties should not agree to them without suit, and there are very valid reasons why parties who have no wish for litigation should not be forced into it. If enhancement be granted under section 43(*c*), on the ground of an improvement effected by the landlord, we would allow reduction under section 51 when it has ceased to operate, or has become less effective. We would strike out the word "permanently" in section 51(*a*). We do not think that the prevailing rate should be struck out from among the legitimate grounds of enhancement. To those whom it concerns, the ryot and the landlord, there is no principle more familiar than that the one should give and the other receive the prevailing rate. It may not be possible to find a rate that uniformly prevails over extensive areas, but it is certainly the experience of all who have had to deal with settlement work that such rates prevail over moderate areas, and that a ryot rarely demurs to paying the same rate that his neighbours pay. Enhancement cases are not now dealt with by the revenue courts in this part of the province, and the Collectors are consequently not in a position to speak as to the extent to which the abuse referred to in your letter (*vide* the production in evidence of collusive or fictitious rates) may prevail. We believe, however, that such suits are not very numerous, and we think that, if such evidence is brought, it ought to be readily rebutted.

22. With reference to paragraph 13 of your letter under reply, paragraph 14 of the letter of the Government of India, and section 53 of the draft Act, Messrs. Tayler, Barton, and Veasey would not allow commutation without the consent of both landlord and tenant. Mr. Barton wishes it to be understood that his suggestion refers to Lower Bengal. Mr. Barrow would allow the section to stand, but would strike out the proviso in section 210(*d*), and leave the parties competent to contract themselves to sale commutation. Where commutation is granted, we think that the rent should be subject to reduction and enhancement like that of an ordinary occupancy tenure. We do not think that the payment of a fixed portion of the produce, even for 20 years, should be considered as establishing a holding at a fixed rate. On the contrary, it appears to us that such a payment was a payment at a variable rate, where the rent was by a special method of adjustment inherent in the system adopted to the circumstances of the holding.

23. With reference to the provisions of Chapter VI, regarding non-occupancy ryots, Mr. Barton would leave all the arrangements to contract, and would strike out sections 58 and 61 and the whole of section 60 except clause 10 The rest of us think that section 60, clause 7, is likely to frighten landlords and drive them into court after five years, and we would strike out the clause as likely to injure the cause it is intended to serve. We would also strike out the last clause of section 60—9 for reasons similar to those that lead us to object to the similar provisions in respect of tenures and occupancy holdings. We would reduce the term of notice in section 59 to three months as in section 95. The term of three months is in accordance with existing usage, and if it is extended to six months it will probably cause many notices to be served after term. Three months also appear sufficient. Considering the importance of the consequence, we would extend the term of suit in the same section from six months to a year. The schedule of limitation should be altered if the term be altered as proposed.

24. Mr. Stevens and Mr. Barrow would strike out clauses *a* and *b* in section 62, and would substitute in the main part of the section the words "what is fair and reasonable" for those that now follow the word "exceeding." In some places where occupancy rents are high, 25 or 50 per cent. would be an intolerable burden. In other cases such percentages might be very light. Mr Barton would add that this shall not apply where a contract has been made. The provision appears to be intended to be some protection to the landlord against the natural effect of subletting to which he is not a party. As the rent of the head ryot is determined by the rules governing the rent of the occupancy ryot, the effect will be, where there is subletting to many degrees, that the lower undertenants will be rather badly rack-rented. While the evils at both ends of this system of subletting are easily seen the suggestion of any remedy except the almost impracticable one of preventing subletting is practically impossible.

25. For the same reasons that we suggest the reduction of the six months' notice in section 59 to three months, we would make a similar reduction in section 63.

26. In section 67—2 we would strike out the portion between the word "dates" in line 4 and the word "as" in line 7. We would provide at the end of the clause that where there is neither agreement nor custom, the local Government may by rule fix dates for any local area. We would not limit these dates to four, because it is often convenient to the ryot to pay in small sums when he gets the money, and it will be convenient to regulate the instalments with reference to the times at which the ryot ordinarily receives money, and to make the amounts as far as possible in proportion to the capability of paying at the dates fixed. The ryot like other people is apt to spend money when it is in possession without thinking sufficiently for future claims, and it is desirable as far as possible to help him in this matter. We would, however, to prevent the ryot from being harassed by unnecessary litigation, provide that not more than four suits shall be brought for the rent of one year. The Government revenue is payable in four instalments, and we think that landholders should be entitled to recover in the same way the rent out of which the Government revenue is paid.

27. We suggest the following changes in the form of receipt prescribed at section 70:—

(*a*) After "year" in heading 2, we would add words to shew that the year in which and not that for which payment is made is meant.

(*b*) In heading 3 we would put thana or pergunnah in place of thanas, as the pergunnah is more commonly used for distinction of area in revenue matters than the thana.

(*c*) Below Government cesses in heading 5 we would put interest.

(*d*) On the reverse under arrears we would enter the years, and we would add a column for interest.

(*e*) We would, in accordance with native usage, transfer the space for signature to the upper right-hand corner.

28. In the form of account we would reput a heading.

5—(*a*.) Interst on arrears.

(*b*) In heading 7 we would enter "as per receipt No. ," and below arrear demand we would put interest.

(*c*) In heading 10 we would add " or that of agent."

We think these additions will make the forms more complete.

29. In section 71—1, after the words "signed by the landlords" we would add "or his agent."

30. After "landlord" in the three clauses of section 72, we would insert "or any one collecting in his behalf" and for the word "shall" in clause 3, we would substitute "may." It should also be made clear what court is to impose the fine.

31. In section 86, after the words "executed by his landlord," we would insert "or any of his servants."

32. In section 90, we would require the landlord's consent to an excavation of a well. There are cases where even the erection of a hut without the landlord's consent would be objectionable. Thus a portion of the land surrounding the owner's dwelling may be sublet for cultivation, there being no idea of the erection of a dwelling for the tenant in front of the owner's door. We would be inclined to leave even this point to private arrangement. Messrs. Barton, Tayler, and Veasey would strike out section 90 altogether.

33. We would be inclined to strike out the word "substantially" in section 87, clause 3. Mr. Barton would strike out section 87—2 *f*. Messrs. Tayler, Barton, and Veasey would strike out section 88, and would insert "or holds at a fixed rent" after the word "holding" in line 2, section 89—1.

34. We would add to the points in section 94, to which regard is to be had in estimating compensation for improvements: "The effect of the improvement on the rest of the landlord's estates or tenure."

35. We do not think that the facts stated in clauses *a* and *b*, section 95—3, are sufficient to warrant a presumption that the notice was served, and we would strike them out.

36. In section 98, clause 3, the general feeling of the Conference was to substitute a uniform period of one year for the two periods of six months and two years, it being specially felt that the latter period was too long. Messrs. Stevens and Barrow were in favour of retaining the periods in the Bill. On the latter part of the section we should substitute "the court may, if satisfied that the ryot did not voluntarily abandon the holding, order recovery of possession at the close of the agricultural year on such terms, if any, with respect to persons injured as may seem just." We would not allow a ryot voluntarily abandoning his land a right to return to it and eject the new occupants on any terms.

37. Section 9 should be considered with section 58. If section 98 is meant to bar ejectment by force, except in execution of decree, there is no objection to the clause, but it seems to us that it should be made clear that a non-occupancy ryot who has held on an expired lease and has been legally called on to quit should quit without suit. We do not think there is any material danger, at all events in this part of Bengal, of the section being used by the landlord to destroy occupancy rights. The ryots here are quite capable of looking after their rights, and when a ryot is illegally ejected he will sue. Such ejectments, however, are not very common, nor are they likely to be so. We have, however, no objection to making forcible ejectment penal in the same way as illegal distraint is made punishable by section 220 when the case is not sufficient to bring the Penal Code into action. Some of us are inclined to think that if the zemindar is to be punished for using force to eject, the ryot who provokes the use of force by holding on without a colour of right should also be punishable.

38. With reference to your paragraph 21 and section 99 of the draft Bill we would allow the landlord to measure the interior details of lakhiraj estates within his estate or holding, only so far as may be necessary to determine the outer boundary. In doing so he should give notice to the lakirajdar. If necessary, the civil court may be moved for, and give an order under section 100.

39. We think that section 101 may stand. It is desirable to familiarise the people with the system, so that in time it may be generally brought into use in supersession of the varying local scales.

40. With reference to paragraph 22 of your letter and section 102 of the Bill we do not think that the risk that managers will often act detrimentally to the interests of the proprietors is great. It will be observed, however, that such risk as is run in the appointment is run in order to avoid inconvenience and injury that is being caused to the public or to private rights It is thus but a small risk of an uncertain evil that is run to obviate certain evils that are occurring. The landlords have the right under the draft section to appoint a common manager, and it is always open to them to settle their differences and have management restored.

41. Mr. Barton would strike out section 110 *b*.

42. In section 111 *a* we would add "residence and father's name." In section 111 *b* we would give the local name by which the tenure or holding is known. In section 111 *c* we would give also the rent payable, the date when fixed, the rate or rates at which fixed, the class of land, and the quantity of each class.

43. It would at times facilitate enquiries if power to examine the landlord's record and account were given.

44 Having regard to the duties to be performed, we think that the special court of section 115 should be a revenue officer assisted by assessors appointed by the parties interested. The court so constituted should have power to refer to the civil court any question of law which may be appealed to the High Court. When the presiding officer and the assessors agree, we would allow no appeal on a question of fact, but where they differ we would permit an appeal to the Commissioner. Section 118, clause 6, should be amended if necessary, in conformity with any change that may be made.

45. In section 116, clause 2, we would provide that every entry be presumed to be correct unless the contrary be proved within three years from the date of the final publication; but in the case of disputed entries we would not allow the matter to be reopened between the same parties or parties claiming through them, so as to prevent collusive disputes, which might otherwise be carried on without the knowledge of those really interested. Section 122 would require to be modified in accordance with any change made in section 116. The words "clause *b*" after section 111 in section 122 should be struck out; the reference is clearly to the whole section 111.

46. With reference to chapter XI, it has been already said that a table of rates cannot be relied on as being applicable to more than moderate areas. The expense of preparing such tables would be generally disproportionate to the area affected. Even when such tables are prepared, the classification of the land will in almost all instances be disputed.

173

We therefore think it will be generally found better in the tracts to which our experience extends to apply the full settlement provisions at once.

47. With reference to section 188-1 and paragraph 24 of your letter under reply, it is the custom at Barripore in the 24-Pergunnahs to let lands to be used for betel-leaf gardens to be held at a stipulated rent while so used. The lands may be so held for 25, 30 or even 40 years; but when they cease to be used in accordance with the original understanding, they revert to the landlord. Mr. Barton, Collector of Jessore, brings to notice the case of the zemindar's khas as contradistinguished from his khamar lands. The latter name designates cultivated lands not held by a tenant but by the landlord himself. The former includes lands also in the landlord's direct personal possession, whether homestead, garden, waste, or uncultivated.

48. The proposed distraint procedure seems to be much like a suit with attachment before judgment. It seems to us to be cumbrous and likely to be dilatory. So far as the districts with which we are best acquainted are concerned, we think it would be better to retain the present procedure, with sharper penalties for wrongful use of them. We would in particular make the landlord responsible in damages for anything wrongfully done by his agent under colour of the distraint procedure, whether authorized or not. We would make the procedure applicable to occupancy as well as non-occupancy ryots.

49. *Section* 123, *clause g.*—We would modify as follows:—

"The court when passing the decree shall, on the oral application of his decree-holder, unless there be special reasons to the contrary, which shall be recorded, order," &c.

50. We do not think it advisable to club suits. It does not appear to us that such a system would facilitate or expedite disposal of them. It is not possible to tell beforehand that important points of difference may not arise at the hearing. Where such points do arise clubbing will certainly lead to confusion. Where cases are really similar, no trouble is now felt in deciding them. One judgment may be made to govern any number of such suits. The proposal to reduce as far as possible court-fees in rent-suits, and to charge reduced process fees when a considerable number of processes has to be taken to one locality, is unobjectionable, and apart from any general reduction in the scale of court-fees for rent-suits. Some refund may perhaps be permitted where one decision is made to govern a number of suits. We think it would also be expedient to see that a sufficient number of officers is always available to try rent cases promptly. In the old days, when rent-suits were tried by the revenue courts, great care was taken to see that they were decided promptly, and full explanation had to be given whenever a case was pending more than two months. We are not sure that equally close supervision is now exercised over the subordinate civil courts, and there is reason to think that delays at times occur. Careful attention should, we think, be given to this point, and prompt hearing of such cases should be ensured.

51. In chapter XV we would be inclined to protect the non-occupancy ryot against ejectment, but would make his rent enhanceable up to the rate paid for similar lands by non-occupancy ryots in the locality, and make any lease under which he may hold voidable by his purchaser.

52. In section 177*b* we would add after "1877," "or any preceding Registration Act."

53. The effect of the limitation of six months in section 186, clause *c*, will be to compel the decree-holder to bring the tenure to sale within six months from the decree. Looking to the frequent dilatory action of the court in execution proceedings, and to the fact that it is to the plaintiff's interest to get his money soon, we think the term may be extended.

54. In section 190-2 there appears no good reason why the judgment-debtor may not purchase. At times, especially when the judgment-debtor consists of a number of quarrelling sharers, it may be a good thing for everybody that one of them should purchase and get rid of the rest; we would allow such purchase, but would not allow such a purchase to void encumbrances.

55. In section 195-2 we would put "a copy of the petition" for "the petition."

56. With reference to paragraph 28 of your letter under reply, we have already indicated that we consider the registration of tenures a task of enormous magnitude and difficulty, and we are not prepared to make any definite suggestions as to the course that should be followed if it be determined to register them. The difficulty that has been experienced in registering estates, especially the revenue-free estates under Act VII of 1876, and the necessity that has been felt of exempting even some of those from registration, make us fear that it would be practically impossible to effect a complete registration of tenures. We think that to be useful and trustworthy the registration, if attempted, should be a public registration. Entries in the serishtas of landlords are often discredited; that any attempt to divide the work by such registration would not be likely to lead to any beneficial results.

57. With regard to section 210, we are all of us agreed on the subject of clauses *b*, *c* and *e*. These we would all retain. With regard to clause *a*, Mr. Barton would allow a ryot to contract himself out of the rights of a settled ryot. Messrs. Tayler, Barton, Veasey and Barrow would strike out clause *d*. Messrs. Tayler, Barton, and Veasey would strike out clause *g*; and Mr. Stevens would so far modify it as to allow contract made at the beginning of a tenancy for a limited term to prevail. With regard to clause *h*, our remarks at paragraph 36 above should be considered. There appears no objection to allowing a ryot to contract himself out of the right to sublet. There is no question that the use of this right is injurious to the superior tenure-holders, and necessarily also leads to the lowest holders holding on by hard terms.

58. The proposal with regard to chur and dearah lands, section 212, do not appear to us to call for any remarks. Mr. Barton would exclude this section (see his note at the end).

59. The provisions of section 220 will meet the suggestion made above for more severe punishments in connexion with wrongful proceedings under the distraint laws. If the present procedure be retained, the last part of section 98 of the existing law will be unnecessary if this clause is enacted.

60. Difficulty is, we think, likely to arise from the use of the words "empowered as aforesaid to accept service" in section 221-2 and the words "authorised in writing in that behalf" in section 221-3. No ryot can ever know whether the agent possesses such a power or not; and though we are aware that the suggestion involves some risk on the other side, we think it would be on the whole better to bind the zemindars by the acts of his recognized agent, so long as there is no reason to suspect collusion or bad faith on the other side.

61. We would alter section 226 so as to make it include a case where the rent, though not fixed, but variable, is clearly inadequate.

62. On the important subject of the transferability of the occupancy right it is to be observed that, according to existing judicial rulings, the occupancy right created by 12 years' occupation under Act X of 1859 is not now saleable. Nevertheless, it appears that in practice such rights are sold. I append statements obtained from the district registration offices showing the sales of ryoti holdings with rights of occupancy sold during the last few months. It will be seen that the results vary in different districts. The purchasers are largely ryots, but mahajuns take also a very large share in the transactions. It is probable enough that all the rights of occupancy so transferred have not accrued under Act X of 1859, but on the other hand it is practically certain that many of them must have. It would be impossible, even by an examination of the deeds, to tell in which cases the rights are Act X rights, and in which they have originated otherwise. The price obtainable for an occupancy tenure, leaving out of count the value of ryots' improvements, which are rare, is the value of the difference between the privileged rate of rent and the market rate; and where the right to sell has originated without the consent of the zemindar, the sale no doubt means the transfer to the ryot of the value of part of the rent the zemindar would have been able to get from the new tenant. On this account, as well as on account of the possible introduction of a hostile tenant, the zemindars object to such sales. On the other hand, such sales are now, in actual fact, common. It would be difficult to stop them. It would be impossible to discriminate between the sales of Act X occupancy rights and other occupancy rights. In this way the stoppage of sale would be attended with injustice to the owners of holdings now legally transferable. It is certainly a benefit, though not always an unmixed one, to the owners to be able to transfer. While the law allows the ryot to hold at a privileged rate, it is only a step, though no doubt it is an important step, further to allow him to sell. On the whole, we think it best to allow the right of transfer to continue. Mr. Barton would, however, as said above, require the zemindar's consent, and we would all give him a right of premption.

Statement showing the Number and Value of Ryoti Holdings with right of Occupancy transferred by Registered Deeds during the last Six Months in the Presidency Division.

District.	Number of transactions.	Purchasers.					Annual rent payable to landlord.	Purchase money.	Area of holding in bighas.
		Mahajuns, traders, and money-lenders.	Landlords.		Ryots.	Others.			
			Landlord of the holding transferred.	Other landlords.					
1	2	3	4	5	6	7	8	9	10
							Rs.	Rs.	
24-Pergunnahs	488	54	20	40	188	196	8,893	55,162	2,771
Nuddea	200	89	3	5	58	45	2,523	10,010	2,771
Jessore	1,003	71	9	47	746	157	10,643	59,566	12,487
Khoolna	183	11	5	23	103	40	3,110	10,277	2,166
Moorshedabad	720	88	5	25	500	125	Figures not furnished.		
Total ...	2,594	313	42	140	1,595	563	20,169	1,35,015	20,195

Note on the Report of the Conference.

The joint letter represents very accurately the opinions expressed at the Conference, and as regards almost the whole of it I find that either I agree or my dissent is noted. There are, however, one or two points of importance on which I wish very briefly to remark.

2. In reference to paragraph 17, I am unable to concur in the theory that in declaring the zemindars to be the proprietors of the soil, the framers of the permanent settlement, either intentionally or negligently, deprived the ryots of any of their rights. It seems to me that the proprietary right of the zemindars is clearly subject to the rights of the ryots—rights which it would have been inequitable and contrary to the known policy of the Government of the time to take away.

I wish to observe also that hitherto custom rather than competition or contract appears to have fixed the rents of the occupancy ryots as well as the conditions of their holdings. It is plain that where the parties are of very unequal strength, as they are in many parts of Bengal, custom tends to protect the weaker against the stronger. The chief purpose of the present Bill is I take it to ascertain and confirm as far as possible existing customs, and to put off as long as possible the inevitable change to a system of competition till the weaker class, by improved education, may become capable of entering into a contract on equal terms. As the "market rates," by which I understand rates resulting from competition, have not regulated the rents of occupancy ryots in the past, I think it desirable that they shall not do so for the future. And section 42 of the Bill appears to be open to objection on the ground that it will have a tendency to determine by competition the rents payable by occupancy ryots.

3. I dissent from the assertion implied in paragraph 18 that a ryot claiming a right of occupancy asserts a special privilege. It has been admitted, even by the strongest opponents of the Bill, that the great majority of ryots have these rights. The occupancy ryot is the ordinary ryot, and the non-occupancy ryot is the exception. I think therefore that, if it is impossible to shew by evidence that the holding is that of the non-occupancy ryot, it is fair to presume that it is of the ordinary kind. I do not, however, like the presumption as it stands in the Bill. The truth is that 12 years' occupation is not in actual fact an essential qualification of an occupancy ryot. Act X of 1859 laid down that occupation for 12 years should as a rule confer a right of occupancy, but it would be a very serious error to say that no rights of occupancy exist, or are even now created, except by virtue of the provisions of that law. In this connection I would invite attention to the following extract from a report by Baboo Kalli Churan Ghose, Deputy Collector, which reached me too late to enable me to use it in my own report, but which I found of great service at the Conference. The extract is of much value in my estimation, in that it points out clearly that non-occupancy ryots are of two distinct classes, namely those who can, and those who cannot, acquire occupancy rights. I do not wish to add more than is necessary to the mass of papers which have now accumulated on this subject, and I will therefore not comment on the extract further. Baboo Kalli Churan Ghose reports as follows:—

"The chapter on non-occupancy ryots deserves serious consideration. A non-occupancy ryot is a creature of Act X of 1859. As far as I am aware custom recognized the holders of utbundi or ticca lands as the only class of ryots liable to ejectment on sufficient notice. The High Court has, I believe, held that if a ryot holds under a lease without specification of time, and the document does not contain words of inheritance, he holds only from year to year and is liable to ejectment at any time before he acquires a right of occupancy. I consider this view to be opposed to custom and to real meaning of the contract as understood by the parties. Notwithstanding the obscurity into which old institutions have fallen, it is remarkable that in this matter the communial rule still serves. In every zemindari sherista khiraj lands are divided into—

1st	...	...	Ryoti.
2nd	...	...	Khamar.

The former is again subdivided into—

1st	...	...	Hazra or 'existing.'
2nd	...	...	Palatoka or 'lapsed.'

"The word khamar means 'not settled,' or available for settlement. The word has not the same meaning as nijjote or other similar words.

"The three divisions are maintained also in the juma-wasil-baki papers, and columns are provided in it for transfers from 'ryoti' to 'palatoka,' and from 'khamar' and 'palatoka' to 'ryoti.'

"The names of utbundi cultivators, if given at all, appears in a supplement.

"As in old times a stranger once admitted into the 'community' became entitled to all the privileges of membership without being required to remain for any period in a state of probation; so it has been the practice of all landlords in the matter of admission of ryots. If once a ryot is admitted into occupation as a jumma-holder, he becomes at once a settled ryot of the village, and is not liable to ejectment. A new-comer is admitted into this class by the grant of a lease, or the registration of his name in the zemindari sherista as a ryot or *proja*. He is shewn in the jumma-wasil papers as the holder of ryoti lands, and becomes entitled to all the privileges of a jumma-holder or khodkosta ryot. The non-occupancy clauses of the Bill deprive this class of ryots of their status. It may be said that if they can prove the existence of a custom they will be saved.

"But I have already pointed out that it is impossible for any ryot to prove a custom. To facilitate the growth of occupancy rights, and to prevent injustice to this class of ryots, I would have a section to the effect that when once a ryot is admitted to occupation without specification of time as the holder of a ryoti tenure, he shall not be liable to ejectment so long as he continues to pay rent at fair and equitable rates. It will be seen that I fully support the proposal that the parties must be left to settle the rents between themselves at the time of occupation. If a zemindar exacts a high rent, the tenure will be given up in all probability; but whether it be so or not, I do not think we can interfere with the terms of admission of a stranger under any practice recognized in the country. If a question should arise regarding the enhancement of rent, it should be decided under section 60 (9). In this section I would, however, substitute the word 'paid' for 'payable.'

"I think express legislation necessary to get rid of the judicial rulings regarding year to year tenancies.

"A real non-occupany ryot is the cultivator holding land under a custom in which growth of occupancy rights is impossible. As for instance an utbundi ryot, a bhag jotedar, and one holding for a term of years on the express understanding that the landlord will re-enter on expiration of the term. If non-occupancy ryots are not subdivided in the way pointed out above, I would certainly object to the definition in section 55. The class referred to in this section includes different subclasses with different rights.

"While it is true that custom and not competition regulates the rents of occupancy and non-occupancy tenures, it is also true that status effects the amount. I do not think any novel principle is being introduced into the law for determining the rent payable by this class of ryots.

"The whole chapter as it stands requires to be reconsidered. It does not improve the position of the non-occupancy ryot, and the apprehensions of His Honor the Lieutenant-Governor seem to be well founded. If the chapter is confined to the real non-occupancy ryot, he should be liable to ejectment, on the expiration of the term of his lease, or on sufficient notice. We can then get rid of the provisions affecting the growth of occupancy rights and tending to increase legislation."

4. In regard to paragraph 37, I certainly think that a non-occupancy ryot who has held on an expired lease, and has been legally called on to quit, ought to do so, and ought not to put his landlord to the trouble and expense of a suit; but I do not think that it would be safe to entrust the landlord with any power of summary ejectment. I am unable to concur in the remark that "the ryots here are quite capable of looking after their rights" Some are, but very many are not, and for proof of this statement I need go no further than the kabulyat which was read by Mr. Ilbert in Council when he was introducing the Bill: that suicidal document was executed by some 1,200 ryots within some 20 miles of Calcutta.

5. It appears to me to be not quite accurate to say that in practice occupancy rights created by 12 years' occupation under Act X of 1859 are sold. The final result of the many conflicting rulings on this subject is that transferability is not one of the incidents of the occupancy right created by this Statute, but it is admitted that the right to transfer a ryot's holding may be given by custom The Chief Justice in the final full bench ruling said as follows:—

"The ordinary construction of the words of section 6 appears to me to be that the right is only to be in the person who has occupied for 12 years, and it was not intended to give any right of property which could be transferred * * The question, as I have answered, is solely upon the Act, and independent of the existence of any custom." My own experience had already led me to the belief that the custom of transferring ordinary tenants' holdings was very general. The statistics now collected by the district officers of this division, and appended to the report, fully confirm this view. These statistics show that in six months. in this division, 2,594 occupancy rights were transferred by registered deeds—three-fifths of them to ryots, something less than one-eighth to mahajuns, about one-fifteenth to landlords, and the rest to "others." It seems plain that the right of free transfer is very generally, if not universally, enjoyed. I cannot, therefore, agree with the report in the statement that "where the right to sell has originated without the consent of the zemindar, the sale no doubt means the transfer to the ryot of the value of part of the rent the zemindar would have been able to get from the new tenant." Nor do I think that the price obtainable for an occupancy tenure (even leaving out of consideration the value of ryots' improvements) is necessarily the value of the difference between the privileged rate of rent and the market rate. This part of the report seems to be based on the belief, which I for one do not hold, that the rents which the zemindar obtains from occupancy ryots either are, or ought justly to be, determined by competition.

While the remarks on this subject do not commend themselves to me, it is satisfactory that there is little difference of opinion as to what ought to be the law.

6. I wish to add one general remark, viz. that, in drafting the new law, the Legislature should be careful to consider the probable effect of each attempt to secure definite checks. I have already noticed one of these (section 40), and there are others. There seems to me to be some reason for apprehension that such checks will often be unsuited to local circumstances, and will therefore be either inoperative or inequitable and mischievous.

C. C. STEVENS,
Collector, 24-Pergunnahs.

Dated the 4th August 1882.

Note on the Report of the Conference.

I beg to add a few words regarding section 213 of the Bill. It enacts as follows: —

"(1) Notwithstanding anything in this Act, a ryot holding land of the kind known as char or dearah, that is to say, land ordinarily liable to improvement or deterioration by fluvial action, shall not acquire a right of occupancy in the land until he has held the land for twelve continuous years; and until he acquires a right of occupancy in the land, shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

"(2) But the court may, on the application of either the landlord or the tenant, declare that any land has ceased to be char or dearah land within the meaning of this section, and therefore all the provisions of this Act shall apply to the land."

2. I am afraid the effect of this section in Behar will be to give the dearah lands to indigo. It seems to me that in its actual working this section will be a source of trouble to tens of thousands of ryots who have holdings on river lands not only in Behar, but all over Bengal. It seems to me that the section can be easily so worked, say by indigo planters, as to prevent the old ryots from getting any rights in the most fertile lands, viz. the new accretions. This section puts it in the power, say of an indigo planter in Behar, to prevent *khud-khusht* ryots from getting rights in the new accretions, and to fix and limit the old ryot to his original holding. After each accretion the original old holding of the ryot will get more and more sandy and unfertile, until at last it will be worthless, and the ryot will have to use the accreted lands just as the former zemindar or planter dictates. The section is a very curious one, and its full meaning escaped my notice at the time of the conference. I think it should be expunged, as it will certainly be mischievous.

3. There is no necessity whatever for making a special provision of this kind for char and dearah lands. Such a provision was never before in any Rent Law. The general principles of the land law should be applicable to char and dearah lands, as they always have hitherto been. This section, being contrary to the customs of the country, would cause the intensest irritation among the cultivators concerned, and would be a weapon of oppression and coercion in the hand of an unscrupulous zemindar or thikadar.

4. I am also of opinion that a ryot or tenure-holder, against whom a decree for rent has been given, should not be allowed to appeal unless he pays into court the amount decreed. This would do something towards curtailing the delays to which refractory tenants can now subject their landlords whom they force into the courts before they can get their just dues. The dilatoriness and expensiveness of the civil courts in the disposal of rent-suits are well-founded and almost universal grievances among rent receivers everywhere.

E. J. Barton,
Collector of Jessore.

Note on the Report of the Conference.

I accept the joint report, but agree generally with Mr. Stevens in the qualifications he has added. I also think there should be only four instalments for payment of rent as proposed in the Bill, and that the law should clearly declare disturbance of possession a criminal offence, whether the disturber is acting under colour of a right or not (section 37 of the report).

F. H. BARROW,

Dated the 12th August 1884. *Collector of Khulna.*

J. E S. & others—Reg. No. 5684C—327—20-8-84.

Telegram, dated 31st August 1884.

From—Darjeeling, | To—Calcutta,
From—Bengal, Revenue, | To—Commr., Presidency Division.

YOUR conference report is very deficient in information regarding the utbandi tenures, Lieutenant-Governor desires you to submit clear report regarding utbandi within one week from date.

W. LeB.—Reg. No. 9813C—327—22-11-84.

No. 24RL, dated Calcutta, the 17th September 1884.

From—A. SMITH, Esq., Commissioner of the Presidency Division,

To—The Secretary to the Government of Bengal, Revenue Department.

WITH reference to your telegram of the 31st ultimo, I have the honour to give below an analysis of the reports of the district officers regarding utbandi tenures.

2. Mr. Stevens gives the following account of the utbandi tenures in the 24-Pergunnahs. Such tenures prevail only in the northern part of the district, where lands in the khas possession of landlords are leased out to cultivators under verbal agreements. The tenancy ceases at the end of either the season or the period of the lease. The usual term is a year, after which the land may lie fallow on account of the exhaustion of its strength or because no one has come forward to take it. Hence the origin of the name *utbandi*. No occupancy right grows in such tenures, and before the crop is reaped the landlord makes sure of the rent by watching that it is not taken away from the fields before his dues are satisfied. These tenures are known in the south of the district as *karfa* or *thika*.

From the very nature of tenures the ordinary incidents of a ryoti tenure cannot, Mr. Stevens thinks, apply to them, as there is an express understanding sanctiond by custom that the landlord will enter after the expiry of the term. But as land is becoming improved, and as there is an increasing demand for land amongst the cultivating classes owing to increase of population, the area hitherto classified as *utbandi* is daily becoming less and less, since landlords are quite open to make settlements with ryots offering favourable rents

Mr. Stevens does not think that the account of such tenures given by Dr. Hunter in his Statistical Report of Nuddea, as they stood in 1872, is in any way defective, but that the tendency is now towards a decrease in the area of such lands.

It is the opinion of Mr. Stevens that so far as utbandi and similar tenures in his district are concerned, the saving of customary conditions provided for in the Bill (section 214) is sufficient.

3. In Nuddea the utbandi system prevails to a large extent. A full account of these tenures is given in Dr. Hunter's Statistical Accounts. Mr. Tayler reports thus on these tenures: "The *utbandi*—the system under which uncultivated lands are brought under cultivation—and the actual area cultivated is measured and paid for at the rate prevailing in that part of the country. Cultivators who take such lands are not obliged to cultivate them a second year, but as a rule they can keep them for certain for three years if they elect to do so. Generally the lands under this system are cultivated from one to five years, and then left fallow for the same period. The cultivators acquire no right of occupancy, nor do they desire to do so. There being more lands in the district than are required by the cultivators, they prefer to take lands which have been lying fallow for a term of years, and which are consequently likely to yield the more, to retaining the same land and cultivating it for once 12 years. The zemindars on the other hand are reluctant to allow cultivators to retain such lands for any length of time, both with the view to prevent their acquiring occupancy rights and to prevent deterioration of such lands. In some cases zemindars get *salami* when allowing new cultivators to take such lands.

Before the introduction of Act X of 1859 ryots were in the habit of taking any portion of such lands without permission of the landlord, but now they give notice and commence cultivation after sanction has been received.

The lands available for utbandi cultivation include—

(1*st*) Khamar lands which include all lands in estates under the direct control of the zemindar, whether cultivated or not, and all waste lands.

(2*nd*) Naksau or jummai lands relinquished by ryots and not relet to fresh ryots.

(3*rd*) All new chur lands. The rate of rent is fixed for each village except in the case of the third kind for which the rate is fixed by agreement between the landlord and tenant. Tenants holding jummai lands sometimes, when unable to cultivate the whole area settled with them, let them in *utbandi* at somewhat higher rates.

During the cold weather months, and some times after the crop has first made its appearance, amins are deputed to measure the lands thus cultivated, and subsequently the gomashta collects the rents.

The system is very well known and apparantly appreciated by the ryots. At first-sight it might be thought that these ryots are not so well off as their neighbours who own jummai lands, but such is not really the case. They are continually cultivating renovated lands that require no manure, and have to pay for the area actually cultivated, whereas those holding jummai lands have to pay for their holdings whether cultivated in whole or in part or not at all, and if they cultivate the whole they must generally go to the expense of manuring or else expect poorer crops. There are zemindars who have extensive tracts of such lands which they would be very glad to let in jumma, but few can be induced to take them, notwithstanding that the rate of rent may be as low as 10 annas per bigha.

The Collector also refers to Dr. Hunter's Statistcal Account of Bengal, and to the note made by Jogendra Chunder Mowlik, under section VI of Act VIII of 1869.

4. *Jessore.*—There are few tenures of this description in this district. They are generally confined to waste lands and bheel lands, which are for the whole or the greater part of the year under water, and which are cultivated by the ryots under special contract generally from year to year. These lands are taken at fixed or progressive rates of rent on terms agreed to by the ryots. The landlord cannot, or at all events does not, enhance

the rent which should be payable in proportion to the quantity of land reclaimed and cultivated. The same ryots can have the same lands for any number of years, but the custom is that he does not acquire a right of occupancy. As a matter of fact the ryot is not disturbed as long as he pays his rent and behaves himself well. The landlord does not enhance the rate originally agreed to if the ryot refuses to pay such increase, but if there are conditions in the lease or conditions verbally agreed to, the rate is enhanced. The ryot can be ejected at the will of the landlord, as the tenures are not kaimi or pucca.

The zemindar claims no rent for any year for land not cultivated, though it remains in the possession of the ryot. The land is gradually cultivated by the ryot, and after the crops are harvested the land is measured and the rent is assessed. The assessment is of course made at the rate originally agreed to.

With regard to applying the principles of the proposed rent law to utbandi tenures, the Collector is of opinion that the customs of the country are pretty certain to be good for the country itself. The people have done well enough with their customs, and if there was not something radically good and sound in these customs, they would not live. He does not think that anything has been shewn to justify interference with the usual customs in regard to *utbandi* lands and the extension of the principles of the Bill to them. He would let them stay as they are, and he does not think that much good can result from preventing the people concerned, who are the most interested, making their legal bargains in their own way.

5. *Khulna.*—The utbandi system is known only in one pergunnah (Khoraria), where the land is bad. The tenure is not a favourite one with the zemindar, as the sole risk is with him.

6. *Moorshedabad.*—*Utbandi* does not prevail to any great extent in this district and as to be found only on the east side of the Bhagiruthee, chiefly in pergunnah Goas. The cultivator under this system, who has no rights whatever, either of occupancy or otherwise, takes the land by verbal permission of the zemindar, no written agreement being entered into, after which the holding is measured and assessed at the local rates as soon as it has been sown down and without any reference to the prospects of the crop. The rent so assessed is realized then and there, and this custom is observed in *do-fasli* lands each time the crop is sown, that is twice in the year, the reason being that the cultivator if left to himself would disappear immediately after harvest.

The Collector would deprecate any attempt at legislative interference here on the ground that the zemindar does not want it, and that if the cultivator is to be turned into a privileged person, possessing rights, and only to be ejected with difficulty, the result will be that the land will be allowed to remain waste to the mutual detriment of both parties. The arrangement is a fair and natural one; it is well understood, and the burden of proof is surely upon those who would replace it by something new and not on the supporter of the perhaps antiquated policy of "let well alone."

J. E. S.—Reg. No. 7208C—327—23-9-84.

No. 913, dated Cuttack, the 9th August 1884.

From—W. R. LARMINIE, ESQ., Commissioner of the Orissa Division,

To—The Secretary to the Government of Bengal, Revenue Department.

I HAVE the honour to submit the following report on the provisions of the revised draft Tenancy Bill, as requested in your Land Revenue Circular No. 3T.—R., dated 24th May 1884.

2 The officers with whom I held a consultation on the subject were the Collectors of Cuttack, Balasore, and Pooree, and Mr. K. G. Gupta, Joint-Magistrate of Cuttack

3. Although there were some differences of opinion in regard to various details, we were at one as to the chief ends to be gained, and as to the main lines which legislation should follow. We all agreed that it was of paramount importance that the Bill should secure, as far as possible, the existence of a prosperous class of cultivators; that no impediment should be placed in the way of the improvement of this class; and that every possible facility should be given the landlord to realize his rents, as far as was consistent with the safety of the tenant. While regretting the necessity imposed upon us by the conditions of the Permanent Settlement, we recognized the justice, under existing circumstances, of allowing the landlords a share, but only a share, in the increased profits accruing to landed property from causes independent of action on the part of either landlord or tenant. Some of us, including myself, were of opinion that, if it could be found practicable, it would be better to compensate all landlords for giving up their right to enhance rents at a rate calculated on a valuation of probable increase in value of produce during, say, the next 20 years. A share of all subsequent increases would thus fall into the hands of Government, which is at present, in Bengal, the only partner in the ownership of landed property which derives no direct benefit from the general increase of prosperity. It is unnecessary, and indeed useless, now to discuss this idea in detail, as it seems to be outside what is called the sphere of practical politics.

4. Leaving this proposal on one side, therefore, we are all of opinion that, if the Bill is to be practically of any general utility, the following principles are essential. Non-occupancy are not to pay a higher rent than occupancy ryots for the same class of land. Every possible obstacle is to be thrown in the way of sub-letting. Net profits should be taken as the basis for the judicial determination of all rents. It is perfectly clear that, if no limit is placed upon the rents payable by non-occupancy ryots, rents will be forced up all round. If occupancy ryots are allowed to sub-let at higher rates than they are paying themselves, and their tenants subsequently acquire rights of occupancy, the landlord necessarily secures a standing point towards a general increase of rent. If gross profits are made the basis for rent settlements, it is quite possible that an increase in the value of produce would be injurious to the ryot, such increase generally involving increased cost of production. These general principles being laid down, I now proceed to discuss the provisions of the law in some detail, following the order of the various paragraphs of your letter under reply. The circumstances of the province of Orissa differ so much from those of the rest of Bengal, that I shall refrain from employing any arguments based on facts which exist only in this part of the country.

5. It seems evident that the definition of ryot in section 5 (3) does not include those holding from unregistered *lakhrajdars*. These latter are not proprietors, nor are they tenure-holders as defined in chapter I. A clause might be added to this sub-section enacting that the word tenure-holder should, in reference thereto, include such unregistered lakhrajdars.

6. As regards section 5 (5), Messrs. Grant, Currie, and Gupta object to any limit being fixed, as they would practically prohibit sub-letting altogether. Mr. Jones and myself recognize the necessity for a limit, and are of opinion that that proposed is as fair a one as can be fixed. As implied above, Messrs. Grant, Currie, and Gupta would not, in section 37, fix any limit whatever. They are of opinion that, if an occupancy ryot lets any portion of his holding, he should be converted into a tenure-holder as regards the whole holding. Mr. Jones and I think that such a provision would be unfair and unworkable. At the same time, we are not satisfied that the limit should be a particular fraction of the holding without reference to its actual size. The question really to be decided would be whether the original occupancy ryot continued a *bonâ fide* cultivating ryot or not, and the limit would then depend on the question whether that portion retained by the occupancy ryot was sufficient to support himself and his family. The principle, I take it to be, is that no one should be looked upon as a cultivating ryot, and one whose interests it is specially desirable to protect, if such ryot does not support himself and his family mainly by agriculture. If, therefore, the possessor of an occupancy holding sub-lets so large a portion of his holding that he cannot support himself by direct cultivation, he has practically abandoned his position, and should be classed as a tenure-holder. This question is one, therefore, which should be either left to the Courts to determine, or else some actual limit should be fixed as to the amount of land which should be cultivated by the occupancy ryot to entitle him to retain his *status* as such. This limit would vary according to the circumstances of each locality.

7. The whole question is exceedingly difficult; but if, as will be proposed hereafter, it is enacted that no ryot can sue an under-ryot for a higher rent than he would himself be liable to pay under the rules for enhancement, the temptation to sub-let will be very much diminished.

8. As regards tenure-holders generally, viewed in reference to the observations contained in paragraph 5 of your letter, we see no objection to the provisions of the Bill; but it is doubtful if they could be applied to the tenure-holders created under section 37. The rents fairly claimable from these on an enhancement suit should be fixed entirely by the rules applicable to occupancy ryots, both as regards rates and intervals of enhancement. Otherwise a conflict of interests would arise, which it would be almost impossible to get rid of. Let, for instance, A be an occupancy ryot, paying rent to B., who by sub-letting to C. becomes a tenure-holder under section 37. B. may sue A. for enhancement of rent, and may obtain a decree for a higher rent than A. is getting from C. A. must then sue C., and possibly may fail to obtain a decree for the same amount of rent. The only way out of the difficulty that I see is to enact that C. should be made a party to every enhancement suit brought by B. against A., and that the decision as to rents payable should equally affect A. and C.

9. With reference to paragraph 6 of your letter, we are all of opinion that no change should be made in the existing law.

10. On the points raised under the head of a settled ryot, all of us are agreed that question (*a*) should be answered in the affirmative. We have no reason to object to the limit of 30 years fixed in defining the word "estate," but we cannot urge any special reason in its favour We all regret our being debarred from discussing, again, the definition of a "settled ryot," being of opinion that the conclusion come to is wrong in principle and inequitable in working.

11. We do not think that section 29 (1) is necessarily at variance with section 28, as long as the ryot is only part proprietor.

12. The next question is an important one, and has been much discussed. Should rights of occupancy be declared transferable? As a matter of fact, they are by custom transferable in the greater part of Bengal, and the custom is daily spreading, so that it seems unnecessary to make any special enactment on the point. If the custom be transformed into a legal obligation, it appears necessary to allow of a right of pre-emption being claimed by the landlord. The recognition of such a right would, in our opinion, lead to results entirely at variance with the ends we are all anxious to attain, and we therefore think it better to leave the question untouched, always provided that the right of occupancy be saleable in execution of a decree for arrears of rent.

13. The question of enhancement next comes for consideration. Objections were raised to section 41 (2) on the ground that no registering officer could ascertain the facts, as the ryot might admit that he had been paying a higher rent than he really had been doing. As far as my experience goes, the day is gone by when ryots will deliberately agree to pay more than they are obliged to do, and the very existence of such a clause as section 41 would very soon ensure a sturdy resistance to any excessive demand. Of course the registering officer could only judge of the facts as set forth in the document before him, but he should see that the ryot understands the provisions of the law. Mr. Grant would place no limitation whatever on the power of contract, but it seems impossible to reconcile such an opinion with the other views entertained by that officer.

14. Section 44 (*a*) led to a considerable amount of discussion, but no one was able to suggest any better limit than eight annas in the rupee, although all were agreed that it was not a satisfactory one.

15. Section 45 is one of the most important in the Bill. We are all dissatisfied with it. It seems unworkable, and completely ignores the cost of production. It is very difficult to lay down principles upon which enhancements of rent can be calculated without entering into very detailed discussions as to what amount of net profits should be allowed to the actual cultivator. Logically speaking, there should be fixed minimum profit over and above the cost of production left in the hands of the cultivator before any rent could be demanded; but probably no two persons would agree as to what that minimum should be. We are of opinion that the most practical plan would be to ascertain the net profits, and divide them equally between the landlord and tenant, with the proviso that the share of the tenant's net profit should be sufficient to insure the nominal value of the holding, if sold, being not less than one year's rent.

16. Section 46 seems fair and equitable.

17. We are all of opinion that section 47 would be unworkable, and would strike it out.

18. With reference to your paragraph 12, we are all of opinion that the rent of *bastu* land should only be increased on the grounds specified in section 43 (*a*). In Orissa the homestead land generally forms part of the holding.

19. It is proposed to amend section 51 as follows:—

In clause (*a*) instead of the words "by a deposit of sand or other calamity," we would insert "from any cause capable of being specially ascertained."

In clause (*b*) instead of "staple food-crops" we would insert "crops ordinarily grown upon such land." We fail to understand why, if the average prices of staple food-crop fell, and the price of the crop actually grown increased, the ryot could justly claim a reduction of rent.

20. We are all of opinion that the price lists referred to in section 52 should include all crops ordinarily grown.

21. Section 53 does not seem open to objection, but some of the Collectors are of opinion that an order under sub-section (6) should be open to appeal. I do not see any necessity for it.

22. I have already stated that, in our opinion, the rents of non-occupancy and occupancy ryots should be identical. The only difference between them then being that the landlord might proceed to sue the former class for enhanced rent at closer intervals than in the case of the latter. Mr. Grant would make no distinction between occupancy and non-occupancy ryots; but this is a question we are debarred from discussing.

23. The question of under-ryots has already been to a certain extent discussed when treating of section 37. I need only add here that those who would permit sub-letting at all would not allow a demand for rents higher than could be claimed from an occupancy ryot, except in the special cases noted in section 37 (*a*) and (*b*).

24. We all strongly approve of the provisions of section 70.

25. Messrs. Grant and Gupta would strike out sections 93 and 94, but Mr. Jones and myself consider them fair and equitable.

26. In section 96 we would omit sub-section (3) altogether; and indeed if our views hold good as to the holding being worth at least one year's rent, the whole section might be omitted.

27. Sections 102 and 109 seem reasonable, but we have not had any such experience as would enable us to form any strong opinion thereon.

28. We are all agreed that it is an almost absolute necessity that there should be a general survey and record of existing rights. Until such is completed, no Rent Bill, even if theoretically perfect, can be properly worked. Indeed, it is open to question whether, if such a settlement be not at least determined on, it is worth while to elaborate such a Bill as the present. Its chief enactments involve a knowledge of existing rights and rates of rent; and if these cannot be determined with some approach to certainty, it will be hopeless to expect any really satisfactory result from the working of the law.

29. As far as our experience goes, section 135 (1*a*) gives a complete list of lands usually looked upon as private

30. We have now to consider the question of procedure in regard to the collection of rents. If, on the one hand, we have striven to secure the tenant from rack-renting and illegal exactions, we are no less anxious to give every reasonable facility to the landlord to realize his lawful dues. The first point for consideration is the law of distraint. Mr. Grant would leave it as it is now; Mr. Gupta would either abolish it altogether or leave it as it is now; Messrs. Jones, Currie, and myself are of opinion that it should be abolished in the case of all saleable holdings, and that the draft Bill is suited to all other cases. It seems to me that distraint is, in itself, a most objectionable proceeding, and can only be justified by its being absolutely necessary. Those best acquainted with the subject say it is thus absolutely necessary, and I defer to their opinion, but its necessity vanishes when the interest in a holding becomes saleable. It is worth noticing that distraint for arrears of rent is or was legal in Ireland, and that, by common consent, such a procedure has become absolutely obsolete.

31. It has been proposed to make the patni law applicable to other fixed tenures. My experience of the Burdwan district leads me to the belief that it would be almost impossible to carry out such a proposal. The number of tenures likely to be advertised for sale would be enormous. Twice a year some 1,400 patni tenures are brought to the hammer, and although by far the greater number are not sold in consequence of arrears having been paid up, yet a considerable amount of labour is expended in serving notices, &c. If all other fixed tenures were similarly dealt with, I doubt if a sufficient number of peons could be found to carry out the preliminary proceedings. The conduct of the sales, too, would probably occupy at least a month.

32. We are all of opinion that the Certificate Procedure might well be employed in the case of all permanent tenures held at fixed rates. If there be no dispute as to the rate of rent, and the proposed system of receipts be carried out, I see absolutely no risk in allowing such a summary procedure as we propose. Where rents are open to dispute, or where there are rival claimants, it would be necessary to proceed in the ordinary way by regular suit.

33. In regard to paragraph 2 of Government of India's letter No. 784, dated 5th May 1884, we have only to say that our experience does not justify us in offering any opinion on the points raised in clauses 2, 5, and 6 thereof.

34. In conclusion, I have only to say that I have purposely avoided entering into any elaborate arguments in support of the views set forth above—*first*, because a thorough detailed discussion of the whole question would occupy a much larger portion of my time than my other duties would permit; and *secondly*, any one who has studied the literature of the Bill will readily find arguments both for and against the conclusions I have come to.

35. I do not think that the Bill, even if modified as we have proposed, is the best we could have, but it possibly goes as far in the right direction as can be hoped for.

W. J.—Reg. No. 5127C—327—14-8-84.

Telegram, dated 19th August 1884.

From—Darjeeling, From—Secy. to the Govt. of Bengal, Revenue Dept.	To—Cuttack, To—Commissioner.

PLEASE see paragraph 10 of your Conference report. Report at once your objections to definition of settled ryot. Wire briefly nature of objections.

C. E. G.—Reg. No. 6364C—338—4·9·84.

Telegram, dated the 20th August 1884.

From—Chandnichowk, Cuttack,
From—Commissioner.

To—Darjeeling,
To—Secretary to the Govt. of Bengal, Revenue Dept.

LONG time limit inconsistent principle. Bill readily evaded by landlord. Settled ryot pure question of fact.

E. D'S.—Reg. No. 6608C—337—9-9-84.

No. 959, dated Cuttack, the 21st August 1884.

From—W. R. LARMINIE, Esq., Commissioner of the Orissa Division,

To—The Secretary to the Government of Bengal, Revenue Department.

As requested in your telegram dated 19th instant, I have the honour to submit the following expression of my views with regard to the definition of a "settled ryot" as now given in the draft Rent Bill.

2. The main object of the Bill is, as I understand it from the ryot's point of view, to secure the resident cultivator in the possession of his holding as long as he pays a fair rent, and also to ensure his having a share in any general increase of prosperity. The words "fair rent" are used in contradistinction to "rack-rent," and recognize the principle that the cultivating classes are supposed to reap profits in excess of the *minimum* of their actual necessities. Permanency of tenure is absolutely an essential element in any system which can be expected to secure this object. If a ryot is exposed to constant demands for increased rent, and is liable to ejectment in case of his refusal to agree to such demands, there is practically nothing to prevent his becoming liable to the payment of a rack-rent, and this would operate with special hardship where population began to press on the soil. It seems to me therefore clear that, whenever any one is, as a matter of fact, a *bonâ fide* cultivator, permanently resident in any particular *estate*, he should have a permanent interest in his holding, and be termed, in the language of the Bill, a "settled ryot." The term of 12 years is much longer than is necessary to raise a presumption of permanent intention on the part of the ryot, and there seems to me to be absolutely no other object with which such a term could be fixed. That the term is too long in the interest of the ryot is proved by the notorious fact that landlords, in some parts of Bengal, shift their tenants about so as to prevent their acquiring rights of occupancy. Such proceedings should be rendered impossible; and it seems to me that if a *minimum* term *must* be fixed, it should not exceed three years. As a rule, there would not be the slightest difficulty in ascertaining whether any particular cultivator was a permanent resident or not, and looked at in this light, the determination of the point might possibly be safely left to the courts A *minimum* term of three years would, however, render it extremely difficult for a landlord to prevent a right of occupancy from accruing. These arguments lose some of their force if the views are accepted, which I expressed in my late report as to non-occupancy ryots not being liable to pay a higher rent than occupancy ones. If such were the law, it would scarcely be worth a landlord's while to disturb a cultivator in his possession for the mere purpose of keeping alive a right to sue, perhaps unsuccessfully, for enhanced rates of rent at shorter intervals than he otherwise could do. Indeed, I am inclined to believe that the equalization of occupancy and non-occupancy rates of rent would, in a very few years, secure occupancy rights to almost every cultivator in Bengal.

C. E. G.—Reg. No. 6365C—300—4-9-84.

No. 47Ct., dated Camp Commillah, the 9th August 1884.

From—E. E. Lowis, Esq., Commissioner of the Chittagong Division,

To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your No. 3T—R, dated 24th May 1884, I have the honour to report on the special provisions of the Rent Bill referred to in your letter. I have at the same time availed myself of the opportunity to say a few words regarding some of the general principles of the proposed law, and to show how far they accord with existing conditions in connection with the landed interests of my division. A conference of all the Collectors was not held to discuss the provisions of the Bill, as in this division communication is very difficult after June; but the opinions of all have been invited. It happens also that Government have had the advantage of two separate opinions on the subject. I was myself absent on leave during May, June, and most of July, and during this period my *locum tenens*, Mr. Cotton, after consultation with the Collector and others at Chittagong, recorded his remarks on the Bill, leaving me to draw up a final report after consultation with Mr. Cooke, at present Collector of Tipperah, and who was for two years Collector of Noakholly. Mr. Cotton's report has been sent direct to Government. I will not therefore repeat what he has said, but merely allude to it where necessary. My own views on this question have been discussed, not only with Mr. Cooke, but also with intelligent natives of Tipperah, and I find that they meet with general support and approval.

2. My remarks of course have special reference to the Chittagong Division, with the condition and past history of which I am more intimately acquainted; but I trust that my remarks will be found equally applicable to other parts of the country, for I believe that, though the circumstances of this division vary in many ways from those found in the rest of Bengal, the difference is due not so much to an essential difference in the nature of the tenure under which land is held, as to the extent to which general principles, common to all, have been more or less developed. There is certainly a fear, which I gave expression to in my last report, that it will be found difficult, if not impossible, to frame a law that will suit Behar and Bengal alike; but the underlying principle being the same in both, I am in hopes that the reports of the different Commissioners will afford material for the successful completion of what is no doubt an arduous task.

3. This division, as you are aware, has of late years, more than any other in Bengal, afforded an excellent field for the study of questions regarding the tenure of land, for it has been the scene of very heavy settlement operations, in the course of which the actual facts regarding the tenure of land have been subjected to close scrutiny and much criticism at the hands of local authorities. The subject therefore is one which has occupied my attention more or less exclusively since 1875, when I first took charge of this Commissionership, and is one, therefore, regarding which I may claim to have acquired some knowledge.

In the course of the operations referred to above, the want of any legal definition of a ryot, and the absence of any recognized line of distinction between a ryot and a tenure-holder were acutely felt; mistaken notions on these points caused difficulties to arise, which were not smoothed out without much waste of time. When last called on to report on the draft of this Bill, the want of any attempt to define a ryot, and to distinguish between the conditions attaching to a ryoti holding and a tenure struck me; and I did not see how the proposals then put forward could be made to fit in with the existing state of things.

The provisions of the Bill have now, however, been materially altered for the better; all the essential points which were previously passed over have now been prominently brought forward and disposed of, as I consider most appropriately, the enunciation of the general principles to be followed in deciding questions of this nature being perhaps the most valuable portion of the proposed measure. I am quite sure that, had the provisions contained in Chapters II and III of this Act been in existence some years ago, the difficulty and delay that have attended our settlement operations in Chittagong and Noakholly need not have been encountered.

4. The Bill defines a ryot to be the person who maintains cultivation by his personal labour or at his own risk; a tenure-holder to be a person let in over ryots, or one who originally let in as a ryot forfeits his position as such by casting on others the risk and trouble of maintaining cultivation. Starting with this broad and well-recognized distinction between the two classes, the Bill proceeds to lay down the provisions applicable to each. These are the general principles that have my entire approval, the enunciation of which my experience during the last few years has taught me to regard as most important.

In the Chittagong and Noakholly settlements, cases were frequently met with of tenants originally let in for purposes of cultivation, true ryots who have sub-let their holdings in whole or in part; and great diversity of opinion has been expressed as to the best method of dealing with such persons, who are in one sense ryots, and in another tenure-holders. Their right to sub-let has been called in question: sometimes they have been treated as ryots, sometimes as tenure-holders and always with an appeal to the civil courts, which gave decisions as diverse as those of the revenue authorities. After much trouble and endless correspondence, I have succeeded in establishing the correctness of the principle I have alluded to as being that set forth in the present Bill, but all that labour might have been saved had the measure now under discussion been law some years ago.

5. The settlement operations in the district of Chittagong have afforded a more than ordinarily valuable field for the examination of the question now under discussion, because it was possible to compare the existing condition of things, not with a dim traditional history

of the past, but with the actual record of things as they were found by us when we first acquired the country more than a century ago. The conclusions I have arrived at are therefore based on reliable data, and not on opinions expressed by revenue officers at the time of the Decennial Settlement, valuable as those expressions of opinion may be.

6. The district of Chittagong was acquired by the East India Company in 1760, and the first act of the new owners was to make a land settlement. Situated as the officers of the Company were, it is evident that this settlement must have been made strictly in accordance with the then prevailing custom. We may safely assume therefore that the papers of that settlement afford a fair picture of what sort of settlement would have been made had the country remained under Mahomedan rule. These papers, I may add, are still in existence in the Collector's office, and though worn and worm-eaten, are in sufficiently good preservation for purposes of reference. In 1763 the unit of settlement was not the actual cultivator, but the talukdar, that is, the person who undertook the responsibility of keeping a certain tract of country under cultivation. The names of actual cultivators appear on the papers, but not the revenue payable by them: that is, assessed on the taluk at a certain customary rate, plus two or three abwabs. The land seems to have been regarded when waste as State property; when brought under cultivation a quasi-proprietary title in it passed to the person who caused and maintained such cultivation, subject to the payment of a certain customary *nirikh* or rate of rent.

7. I have been fortunate enough to obtain from a native gentleman, whose family have been in the district from a date previous to our occupation of it, a copy of an old Nawabi grant or lease, which shows the manner in which waste was taken up and the conditions under which it was held. The following is a translation :—

"According to the kabulyat executed by Manna Asbek, this potta is granted to him on the following terms for the jungle land situated in mouzah Shuluk in Chakla Rangonea of Islamabad, within the boundary noted on the margin, exclusive of the land contained in the pottadar's of pergunnah Nezam Nagar, that he will bring the land into cultivation by inviting settlers who have no fixed abode for themselves. He will receive an allowance of three kanis and four gundas for each droon of waste which he makes culturable, and remaining quantity of land will be settled with him, and he will have to pay the Government revenue. It should be remarked that the khanabari and naukari lands will be settled at noabad rate, besides he will not have the responsibility of making bridges, &c. :—

South by Gurcherry, north and east by Kazi Mahamed S-gir's abad land, Raktcherry and Pokonea nala, and west by Shapleja dehee and Hatya tank.

	Rates.	Rs.	A.	P.
First year, 1120 M. S.	Maf ...	.....		
Second year, 1121 M. S.	Ryoti ...	1	8	0
	Unintelligible	0	12	0
	Khamar ...	0	8	0
Third year, 1122 M. S.	Ryoti ...	3	0	0
	Unintelligible	1	8	0
	Khamar ...	1	0	0
Fourth year, 1123 M. S.	Khamar ...	2	0	0
Dated 22nd Joomadil Awal 1220 M. S.	Ryoti ...	6	0	0
	Unintelligible	3	0	0

The pottah bears no signature, but is stamped with a Government seal and bears date 1120 Mughi, equivalent to 1758 A. D., or only two years before the cession of the province. It will be observed that the intention evidently was to allow the grantee to bring as much land as he could under cultivation, the land to be hereafter subject to measurement and assessment; a proprietary allowance of more than one fourth or over four kanis being granted for every droon of land then found to be under cultivation.

8. Our settlement was made with men who had acquired land under some such leases as the above, and it is certain that all taluks were assessed at a certain rate, and all were allowed deductions under the head of khanabari and pattadari allowance, that is, for a homestead and allowance as holder of the lease. I may add that the talukdars, who were virtually the ryots, though directly liable to the Government demand, actually paid revenue through certain persons called tarafdars, who were responsible to the Nawab's representative; but it is clear that these tarafdars, with whom the Permanent Settlement was eventually made, were in the first instance merely farmers of revenue, and responsible for a certain sum which had been assessed by the State on the talukdars; and it is important to observe that the Government demand was made on the talukdars who merely paid through the tarafdars. It is easy to understand why the Government did not look below the talukdar; land was then plentiful, and the actual cultivators few; these latter, too, sat very loose to their holdings, and were migratory and fluctuating, so that the responsibility of maintaining cultivation was considerable.

9. Along with our settlement of the land open to assessment, measures were also taken to secure the expansion of cultivation over the existing large tracts of waste; and to this end a proclamation was issued, inviting persons to take up waste, and assuring those who did so that land so taken up would be exempt from assessment for a certain period, after which the customary rate would be assessed on all lands found under cultivation;

and further, that any future increase of cultivation, ascertained after actual measurement, would be subject to the same customary rate. The people were in fact assured that their new masters were resolved to adhere to the old custom, the person who brought waste under the plough, and maintained cultivation, being liable to the fixed *nirikh* or rate on all lands reclaimed by him.

10. From these proceedings we may learn that the waste was considered to be the property of the State, who held it for the public benefit; that when brought under cultivation, it was subject to a demand governed by a customary rate; that assessment was made on the person who became responsible for the maintenance of cultivation, that is, on the person answering to the description of a ryot in the Bill; and that the assessment was limited to a demand against the land found by measurement actually under cultivation, land so discovered being liable to assessment in future, whether cultivated or not. In fact, Government dealt direct with its ryots, using the word ryots in its fullest signification, though realizing the revenue through the agency of tarafdars. There were cultivators under the talukdar ryots, but they were unsettled and held to be possessed of no rights.

11. From 1763 up to the close of the century, land continued to be taken up under the above conditions, revenue being assessed on the talukdar for all land under cultivation as found by the successive measurements that were made from time to time, such assessment being always levied at customary rates At the time of the Decennial Settlement, all lands shewn by the measurement papers of 1763 as belonging to tarafs were permanently settled with the tarafdars, who were, however, understood to be bound by the prevailing rate in their demand on the jamabundi ryots, as the talukdars under them were called. So far there had been no need to look below the talukdar, the real ryot; he cultivated personally the whole or part of his holding; what he could not cultivate personally, he undertook to maintain in cultivation by means of temporary ryots.

The maintenance of cultivation, however, under such conditions was troublesome and irksome; gradually, therefore, it became the custom for the original ryot, the talukdar, to sub-let to itmamdars or sub-tenants, who undertook to pay a fixed rent for a certain area, so far relieving the talukdar of the trouble and risk of cultivation; and so in the next great measurement that took place in 1836, we find itmams recorded in some places within the taluks. The status of the itmamdar was not recognized by any enactment, but as these tenures were and are almost always protected by leases, no difficulty regarding them ever arose. As time went on, however, the cultivators under the talukdars and itmamdars, who were originally shifting and migratory, began to settle down; cultivators found land, taken at first on temporary leases, so much to their liking, that they continued in possession at the old rent, and so beneath the original ryot sprung up a class of sub-tenants with certain rights recognized by custom, but not recognized by law.

The original ryots, the talukdars, thus to a great extent gradually rid themselves of the risk of the cultivation, and enjoyed fixed rents from itmamdars protected by leases; these again in their turn rid themselves of the risk of cultivation by letting to dur-itmamdars, or induced cultivators to remain on the land, cultivating the same land year after year, thus practically casting on them the burden of cultivation. The itmamdars and dur-itmamdars were protected mostly by permanent leases; the ryots were protected only by custom, but had acquired certain prescriptive rights.

12. The above does not afford an exact picture of the condition of the whole province, but I apprehend that much the same process had been going on in other places as had been going on in Chittagong; at any rate, it was felt that half a century of peace and quiet had introduced such changes into the agricultural community, that some measure was needed to define more clearly the mutual relations between landlord and tenant. It was then that Act X of 1859 was passed, and the occupancy right recognized, under which many of these sub-tenants have gradually acquired substantial rights.

The legislators of 1859 contented themselves with giving certain privileges to the ryot, but did not attempt to define the limit beyond which a tenant ceased to be a ryot, and indeed it is the gradual acquirement of rights under Act X of 1859 that has often placed the ryot in a position to convert himself into a superior holder; but whatever may have been the case 25 years ago, it is evident that we must now look below the ryot of Act X to find the person entitled to the privileges which that law was intended to bestow. Since Act X was passed, there has certainly been in this district a gradual development of successive interests in land, which render the passing of some such measure as that under discussion imperative.

13. A great deal of land in Chittagong is still let to cultivators who pay at fluctuating rates and occupy for the year only; but as cultivation extends, the tendency to settle definitely for land increases, and with a number of gradations of holders, all let in originally as ryots, but not all in a position to claim the privileges of a ryot, it becomes necessary, in order to prevent confusion, to settle definitely what rights and privileges accrue to each class. What I have said regarding Chittagong applies equally to Noakholly. Everywhere the land is held by talukdars, howladars, &c., under whom are sub-tenants, some of whom pay a fixed rent for a given area, some of whom take up more or less land as they please, but there also, as land becomes more occupied, and ryots more numerous, the tendency to settle becomes more and more manifest.

In Tipperah, again, when there was an abundance of waste waiting for the plough, the ryots were often migratory, and the system arose of charcha measurements, under which ameens were sent every year to measure the amount of land held by the ryot, according

to which rent became payable; but here the same hardening process has been going on, and the migratory ryot has in most cases become a tenant claiming an occupancy right.

14. It is easy, as I have shewn, in Chittagong to trace the gradual growth of the various sub-tenures: first the talukdars responsible for the maintenance of cultivation over a given area, paying themselves a customary rent, and making what profit they could by letting to ryots who sat loose to their holdings, or only cultivated by the year; then the gradual settlement of the cultivating class, and the creation from amongst them of sub-tenancies, the holders of which in their turn undertook the risk and responsibility of maintaining cultivation, paying to their superior landlord a customary rent, the rate of which was practically fixed; again, as population increased and cultivation expanded, the process of sub-letting has gone on, till we have often a chain of sub-tenants between the original landlord and the cultivator, all originally let in as ryots, but who have in course of time really become tenure-holders. It may be objected that I seem to affirm the necessity for legalizing sub-letting, and so in truth I do to a certain extent; for with a population continually increasing, and dependent for support on agriculture, sub letting is inevitable, and will be resorted to whatever restrictions legislators may devise, so that we do well to allow a natural law to be followed, contenting ourselves with affording protection to the real ryot, and taking care that the person who absolves himself from the risk and trouble of maintaining cultivation is relegated to his proper position as a tenure-holder. This the Bill before me proposes to do; for a distinctive feature of the proposed law is that it recognizes sub-letting, but seeks ever to protect the lowest link in the chain, the cultivator, by enacting safeguards in respect to his assessment, &c, and by compelling the superior holder, be he called ryot or itmamdar or howladar, to take his proper place as a tenure-holder. Sub-letting has permitted a population accustomed to live on the land to maintain themselves in this manner, and has afforded a safety-valve to the pressure of population, but for which we must ere this have had to solve the problem of how a vast population is to be taught to seek maintenance by other means than agriculture.

It is only during the last twenty or thirty years that the pressure of the population on the soil has caused that increase in sub-infeudation which now demands legislation; such legislation must coincide with existing conditions, and, being suited to altered circumstances, may appear to be open to hostile criticism on the ground of novelty; a consideration of the revenue history of Chittagong, however, will show how unfounded any such objection is. Rise in the price of produce and demand for land, with the check of a customary rate, have there introduced a serious of sub-tenants, each in succession entering as true ryots, and each in turn abandoning the risk and trouble of maintaining cultivation in favour of an inferior holder; a change has thus been gradually brought about, which has in some places led to complications that can only be allayed by the application of the law. The present state of things has been evolved without friction in Chittagong, and also in Noakholly; in neither district do we find the discontent that we hear of elsewhere, but none the less is it a misfortune, that up to date legislation has not sought to define what is meant by a ryot, and when a holder of land ceases to be a ryot and becomes a tenure-holder.

CHAPTER II.

15. I approve entirely of the description here given of ryots and tenure-holders; the two classes are quite distinct, and the present attempt to lay down rules for there separation I consider a great step in advance. In reporting on the original Bill, I pointed out that the absence of any definition of a ryot was a fatal omission, and I am glad to see that a clear definition has now been deemed necessary.

16. I have in more than one report to the Board, and otherwise, expressed my opinion that the true ryot is he who undertakes the risk and trouble of cultivation, whatever his designation may be; and that he who receives a fixed rent, and escapes such risk and trouble, is not a ryot, but a tenure-holder. This principle the present law, I am glad to see, fully recognizes; the rule is simple and easy of application, as well as comprehensive; and by following it there can be no difficulty whatever in determining whether a holding is a ryoti one or a tenure. Sub-letting may or may not be an evil, at any rate the practice is universal, as well as one which will increase as cultivation spreads, and the pressure of the population on the soil becomes greater; the enunciation of the above rule therefore is necessary for the guidance of the courts and revenue officers, and for the protection of the under-ryot, a large and increasing class of tenants.

17. From what I have said in a previous part of this letter, it will appear what a growth of sub-infeudation has sprung up in this division, and how necessary it is to lay down some definite rules whereby the position of the lowest class may be assured, and protection afforded to the person on whom falls the risk and trouble of cultivation.

Act X was an immense advance on the old law, and assured protection to the occupant ryot; since then agricultural prosperity, and the spread of cultivation, has developed another class of ryots, viz. under-ryots, and to meet the necessities of their case, fresh legislation is now demanded. We seek to be the apostles of no new creed, but simply desire to apply and formulate a natural law, under which, in my division at least, landed tenures have during the last century gradually sprung into existence.

18. *Section* 5 (2) requires some little amendment to meet the requirements of this division. A good deal of land is let in Noakholly and Chittagong to yearly tenants, who arrange in the spring the amount of land they wish to take up, and often also the rate at which they agree to take it. These arrangements depend on the state of the rice market at

the time; when the bazar is good, more land is let and at better rates: and the contrary happens when the market is depressed. In such cases, by applying the rule which I have alluded to, it will appear that as the risk does not rest on the temporary cultivator, but on the person who receives rent, therefore the latter is the true ryot. Again, a Noakholly chur howladar is often dependent entirely on cultivators, who enter into such yearly agreements, so that in a bad year much of his holding may remain unlet; he, therefore, is the true ryot, though he does not, speaking strictly, come within the wording of the definition. It is true that by applying the principle which underlies the Act a correct conclusion may be arrived at; but to avoid mistakes I would insert in section 5 (2) after the word "partners," "or by means of inferior cultivators holding by the year and at fluctuating rates." I would also add a fresh clause (*b*): "a person shall not be deemed a ryot who enters on land for the purpose of temporary cultivation, or under engagements subject to yearly or short periodical modifications."

19. The presumption in section 5 (3) I do not consider a fair one. One hundred bighas comprise an area larger than one person can ordinarily maintain in cultivation by his own labour. There are cases in which cultivation is maintained over as large an area by means of temporary yearly holders such as I have described above, but the trouble and risk of such management is excessive, and, as a rule, even an area of 50 bighas is not considered too small to admit of sub-letting. Hundreds of our Government taluks are very much below 50 bighas in extent, and yet we find on them itmams and dur-itmams under the talukdar. I would certainly fix the limit at 50 bighas. Our object is not to extend the ryoti privilege over as large an area as possible, but to extend our protection over under-ryots as far as possible.

The most useful feature of the proposed law is that it extends protection to the ryots' under-ryots, a class hitherto unprotected; the limit therefore should not be too liberal, and, as I have said, I consider an area of 50 bighas as much as a person can ordinarily undertake to cultivate by himself. The common run of real ryoti holdings, as a ryoti holding is interpreted under the proposed law, is below 50 bighas.

CHAPTER III.

20. *Section* 8 cannot be maintained in its present shape. The rent of a tenure can be sometimes equitably more than doubled: take the case of a howla on a Government chur containing a large quantity of waste, the howladar, it is true, is probably let in as a ryot, but he sub-lets his holding to nim-howladars at fixed rates; at the end of a term of years, when what was waste has been brought under cultivation, it would be perfectly just to demand in some cases more than double the original rent. It is true that a subsequent section deals with reclamation of waste, but increase of rent due to cultivation of waste is so common a contingency in this division, that it would be much fairer to provide that the rate shall not be more than doubled, not the rent: the limit as to the total rent cannot, I consider, be sustained: the section may run thus—"The enhanced rent * * * shall not be at more than double the rate at which the rent was previously payable."

21. *Section* 11.—No definition is here given of what is meant by a permanent tenure. I presume the term is not intended to be confined to istomarari or mokarari leases, but to comprise all tenures, the term of which is not fixed by contract, where possession is continuous, subject only to payment of a fair rent. This is no doubt intended, but it would be as well to define this a little more clearly.

22. *Section* 15.—The registration of tenures is a most necessary provision, and I consider that such registration should be both public and compulsory. We have now reached a stage at which it becomes needful to adopt measures to secure protection to under-ryots, and to do this effectually we must secure the separation of the two classes, which can only be properly effected by public registration. The procedure must also be compulsory, and neglect in complying with the provisions of the law must entail penalties, otherwise registration will be to a great extent a dead letter. A strict application of the provisions of the law in this direction is indeed necessary, and it must not be forgotten that sub-letting ryots are numerous, and that they will not regard with favour an enactment which brings them under the summary sale procedure, but will do all in their power to escape its provisions. In this view it appears to me that the burden of registration is too much thrown on the landlord; it is true that registration will be to him a boon, for certainly in Chittagong and Noakholly direct dealings with the actual ryots on the part of the proprietor of an estate are rare, and there will be no backwardness on their part in insisting on registration; but it is not always possible for the landlord to know of all transfers and successions, and it is rather the duty of the transferrer and transferee to make known the transaction than that of the landlord to hunt out the information. But throwing the onus on the tenure-holder will not alone suffice. There is no doubt that, if registration be left to be settled between the parties themselves, difficulties will arise, registration will be neglected, and the information on the subject will not be as public as it ought to be; for these reasons I am of opinion that registration should be public, in carrying out which proposal there need not be, it appears to me, any difficulty whatever.

There are rural sub-registry offices scattered over the country, to which the people commonly resort for registration of deeds; at these offices sub-registers could easily be opened for the registration of tenures, and entries in these sub-registers sent periodically to the Collector, who would keep up one general register for the whole district.

23. Mr. Cotton foresees great difficulty in the way of any registration, but as public registration has practically been effected in Chittagong, the objection may be treated as groundless. As I have already stated, most of the tenures in Chittagong, or what will be treated as tenures, are covered by permanent leases which, under the provisions of the Registration Law, must be registered: as a fact, during the past few years 248,043 such holdings have been registered. We may assume therefore that a considerable proportion of the tenure-holders in Chittagong have already been registered without litigation or trouble of any sort; what has been done to some extent may be enforced to the full; what has been done in one place may be done in another. The necessity for registration of documents having been made clear to the people, the deeds have been registered, and so, if the necessity for registering tenures be made clear, I apprehend no difficulty in enforcing the provisions of the law. I would make it compulsory on every person acquiring or succeeding to a tenure, and also any one becoming a tenure-holder under section 37, to register; and to secure obedience, I would extend the provision of section 18 (2), and disqualify every unregistered tenure-holder from suing for rent; while to guard against any evasion of the rule, I would make it compulsory on every plaintiff in a rent-suit to state that he has been so registered, and to support the statement by filing copy of the entry, the court declining to accept any plaint that does not contain an affirmation to this effect. Under section 20 again, I would make all late applications liable to a fine in the shape of double fees.

24. I would also make registration of a permanent tenure in pursuance of these provisions equivalent to common registry under Act XI, and a protection in case of sale for arrears of revenue. Some such provision is really necessary to prevent the hardship which is at present encountered under the Sale Law. There are hundreds of sales every year in Chittagong of taluks and tarafs, within which are numberless itmams and other permanent sub-tenures totally unprotected; the Sale Law provided a protection by registry in the Collector's books, but the safeguard was not understood at the time, and by the time the protection came to be appreciated, the period within which registry ought to have been made had passed away, so far as old holdings were concerned. I need not, however, enter further into the details of this scheme for public registration. I will merely say that, as I consider the recognition of the essential difference between a ryot and a tenure-holder a peculiarly valuable part of the proposed law, so I consider the registration of tenures as a most important part of the scheme. Every tenure, including of course every sub-let ryoti holding, should be re-registered under penalty in case of neglect to register, and the registration should be public.

25. As I have said, I anticipate no difficulty whatever in the working of these provisions, including summary sale; in fact, I can cite the case of one large estate in Noakholly, where a system of letting to small talukdars, whose rents are realizable by summary sale, has long been in force. The Paikpara Rajahs own very considerable estates in Noakholly, which consist almost entirely of small taluks, saleable under Regulation VIII. These taluks are not extensive, but resemble the intermediate tenures which the present law seeks to deal with. Every year, on kist day, a long list of taluks in arrear is handed in to the Collectors, but, as a rule, before sale day the arrears are paid up, holdings being but rarely actually brought to the hammer; the rent is realized punctually and without trouble, and the under-tenants are not harassed. I would be glad to see a public register of all tenures in every estate in Bengal, the arrears due from which could be realized with like punctuality and ease. The introduction of this measure will be a great boon to the proprietors of permanently settled estates in my division.

26. *Izarahs.*— Before leaving the subject of tenures, I would take the opportunity of making some remarks regarding a point which has not been noticed either in the Bill or in the Government letter—I allude to the enhancement of rent by temporary farmers. Under the definition contained in section 5, an izaradar or farmer is a tenure-holder, and in discussing the rights and privileges of that class, I would wish that some limit had been placed on their power to harass and oppress the ryots The custom of granting izarahs is a most vicious one, and injurious to the interests of zemindar and ryot alike; to the latter it brings rack-renting of a peculiarly searching description; to the former it brings a temporary increase of rent at the cost of future difficulty with the tenantry. The custom, I am thankful to say, is not known in Chittagong or Noakholly, at least it was only introduced for a time in the latter district on the estates of the Maharajah of Tipperah, but the izaradars' houses and cutcheries were burnt, and the attempt was abandoned. The custom prevails in Tipperah, however, though all honest and intelligent opinion condemns the practice. The zemindar lets part of his estate, two or three villages, to an izaradar, sometimes putting up the izarah to the highest bidder; the izarah is generally only for three or four years, and is taken in most cases by some local man who is acquainted with the means of the individual ryot, and who measures his demand accordingly. It will be understood that under the izaradars rents are very much enhanced, and such is their local influence, that the ryots will continue to be harassed under them, the law notwithstanding. I consider, therefore, that some restriction should by law be placed on their power to enhance. In this proposal I have the support of all the intelligent natives in the district: the enhancement by these temporary and grasping farmers, eager only for their own gain, has been a source of great hardship to the ryots, and it would be in every way desirable to discourage this form of sub-letting. I would suggest the propriety of absolutely forbidding enhancement by the holder of a temporary farm.

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CHAPTER IV.

27. *Section* 25.—In view of the prevalence of yearly holdings in this division, which do not convey, and never have been held to convey, occupancy rights, it will be necessary to make some alteration in this section: the following addition may be made to 25 (1):—"This right shall not extend to land held under temporary engagements, subject to yearly or short periodical modification, unless there has been 12 years' continuous possession under such temporary engagements." Again, in section 26 a further clause may be added (8):—"The entire provisions of this section are subject to the reservation contained in the latter part of clause 1, section 25."

28. Doubts have been entertained as to the expediency of allowing to a settled ryot right of occupancy in an estate, and it has been pointed out that this presumption will be hard on the owners of large estates. If the proposal made by me in a previous part of this report be accepted, and if every ryot who sub-lets is compelled to take his place as a tenure-holder, I do not understand how the provisions of the Bill can work any injury.

In order to maintain his position, and enjoy the privileges of a ryot under the Act, a villager must have land near his home: he cannot take up land in different parts, even of a small estate, without sub-letting, and thus forfeiting his occupancy right. The fear entertained, I fancy, is that one man will acquire ryoti holdings all over the estates of, say, the Rajah of Burdwan, and being a settled ryot of a village in Burdwan, may, as such, acquire occupancy rights in lands situated in Dacca. But this, if the rule suggested be enforced, he cannot do; for he certainly can only cultivate in one locality, and can only be entitled therefore to be considered a ryot in one locality, guarded by the provisions of section 37 and compulsory registry with its attendant disadvantages. I apprehend no injury to the owners of large estates from the working of these provisions. It is rather the small proprietor who will suffer. Holding land in a village for a period of 12 years makes a villager a settled ryot, and confers a right of occupancy; there may be twenty separate taluks in a village, in Chittagoug there are often a great many more. As the proposed law now stands, the settled ryot may take up land in a dozen taluks, and in each claim at once right of occupancy; for all the lands may lie within easy distance from his dwelling-house, and he may hold them all as a ryot under the Act. On consideration it will, I think, be found that the smaller proprietors, and not the larger, are the ones who have cause to object to sections 25 and 26. This objection on the part of petty tenure-holders applies with force in Chittagong, where such holdings are legion, and in a less degree to Noakholly, the only remedy seems to be a proviso that a ryot acquiring occupancy rights under one tenure within an estate cannot carry those rights with him, as it were, in respect of land taken in another tenure, even though both are situate within the same village.

29. *Section* 30 will also require some alteration. After the words "year to year" insert "nor in lands held under temporary engagements." It will be observed that, while I seek to exclude mere temporary holders from the enjoyment of occupancy rights, and the position of settled ryot, I yet desire to favour the settlement of such migratory and shifting cultivators. If a person holds the same land even under temporary engagements for a period of 12 years, we may safely presume that he wishes to settle.

30. *Section* 31, clause (*f*) will require some slight alteration. I do not agree to the proposals set forth in the next chapter, and consider that, where the custom of allowing transfer of occupancy rights is in existence, the exercise of the right should not be hampered with conditions; the recognition of the right, however, may be confined to those places where it is now allowed to be exercised.

CHAPTER V.

31. *Restriction on transfer.*—These provisions I would gladly see eliminated from the Bill, as I see no occasion for restricting the transfer of ryoti holdings. This right most certainly increases the value of the holding, and the more we succeed in effecting that, the more do we better the condition of the ryot, and the better security do we give the landlord for the realization of his rent. This view has been in fact accepted by the proprietors in Eastern Bengal, and the custom of acquiescing in the transfer of occupancy rights has gradually sprung up. It may be a question whether the custom is now so prevalent everywhere as to call for general legal recognition, and it may be necessary to restrict the operation of such legal sanction to certain localities; but there is certainly no reason whatever why restrictions on the exercise of the privilege should be deliberately imposed where the right has been exercised without objection. If it be deemed inadvisable yet to accord general sanction to a practice which is not yet common to the whole country, then better far to leave the question alone altogether than to hamper the movement with vexatious restrictions that may impede its progress.

The time cannot be far distant when the right of transfer will come to be universally, and not merely locally, recognized. Let us in the meantime take care that we do not, by indiscreet interference, hinder the progress of its development.

32. *Restriction of sub-letting.*—These provisions, taken in conjunction with those regarding tenures, constitute a most prominent feature in the present Bill, and though they may appear to be novel, and do indeed indicate a great advance in our legislation on this subject, they are, as I have said, really only the development of principles which underlie our system of

landed tenure, and which have been all along acknowledged; the position therefore taken in the Bill only indicates our having taken a step forward in sympathy with the progress made by the agricultural community, and does not indicate an entirely new departure.

33. That the proposed rules regarding sub-letting will have the effect of discouraging the acquisition of occupancy holdings by mahajans, I am very confident. As a rule, no mere money-lender will cultivate himself; if he buys an occupany holding, he must sub-let, and then he becomes a tenure-holder, with power only as such over his ryots In the case of ryots who lend money, the same remark applies; a substantial ryot who is well enough off to lend to his neighbours, has probably already as much land as he can keep in cultivation; and if he purchases, it must be with the intention of sub-letting the holding, in which case he, like the mahajan, becomes a tenure-holder, his tenants being protected as ryots Practically the cultivating classes are too well off in this division for there to be any fear of occupancy holdings falling into the hands of mahajans.

34. *Section* 37 requires some alteration. Sub letting to the temporary cultivators, I have described in a previous paragraph, cannot be regarded, as such getting rid of the risk and trouble of cultivation, as to warrant the ryot being regarded as a tenure-holder. I would also desire more distinctly to affirm the principle that the onus of causing prompt registration lies on the person who creates incumbrances. The section should run thus:—"If an occupancy ryot gets rid of the risk and responsibility of maintaining cultivation by sub-letting to other than to temporary or yearly cultivators more than half the culturable area of his holding, he shall be deemed to have become a tenure-holder, and shall be bound to register himself as such in a public register, under any Act which may be passed for registration of tenure-holders."

35. I have altered the words "half his holding" to "half the culturable area of his holding," in order to provide for the case of holdings which contain a considerable quantity of waste; such holdings, I may add, are common enough in this division. A taluk in Chittagong may contain a quantity of hill which cannot be cultivated; a chur howlah or nim-howlah in Noakholly may contain a quantity of land as yet unfit for cultivation; in such cases, the person originally let in as a ryot might sub-let most of his culturable area, and yet claim to be treated as a ryot, on the ground of not having sub-let half of the entire holding, though to all intents and purposes he may have become a tenure-holder by sub-letting half of the culturable area. The difficulty of fixing the extent of sub-letting, which shall convert a ryoti holding into a tenure, is no doubt serious; but I consider that the conclusion arrived at by the Select Committee is a fair one under the circumstances: experience alone will show whether the sub-letting of half the holding does or does not practically effect the purpose for which the restriction is laid down.

36. *Section* 37, *clause* (*a*).—As far as my own experience goes, there seems to be no good reason for the insertion of this provision. Sex is no bar to proper management of a ryoti holding in this country; a woman is rarely, if ever, left absolutely alone, and even if a woman finds it necessary to sub-let, I see no objection to her being obliged to assume her proper position as a tenure-holder; there is no reason why her under-ryots should remain unprotected, because a woman is incapable of undertaking cultivation and has (an improbable contingency) no relation who will undertake for her. So as regards the other disabilities mentioned in the clause. I see no reason why the under-ryots in such cases should be left unprotected.

37. *Clause* (*b*) also I would omit as opposed to the principle underlying the entire measure, viz. that a person who escapes the risk and responsibility of cultivation by sub-letting ceases to be a ryot, and ceases to enjoy the privileges of a ryot I am clearly of opinion that the holding of a person who becomes a tenure-holder under section 37 must be considered to have become subject to sale for arrears, enhancement, &c., the same as other tenures. It would, I am sure, create much confusion if we attempt to treat sub-letting ryots in this half-and-half way. We have declared, and declared rightly, that the person who undertakes to maintain cultivation is the one entitled to the privileges of a ryot, and that the person who escapes from this responsibility must be relegated to another class with other rights and privileges. Why should not the rule be rigidly applied? It is a very simple one, and perfectly easy of application. If a ryot sub-lets, let him be treated as a tenure-holder; let him continue to pay the same rent he paid as a ryot, which will be considered to be a fair and equitable rent, and subject only to enhancement as provided in section 7; while even if he retains part of the holding in his own possession, clause (*d*), sub-section 3, section 7 meets the case. Mr. Cotton has very graphically described the confusion likely to arise from the proposed method of dealing with converted tenures, and indeed there is some foundation for his objections; but the difficulty, it seems to me, vanishes if we proceed on the lines I have suggested, and apply to these holdings the principle of the Bill in all its integrity; only in this way can we avoid the confusion which Mr. Cotton anticipates. I am entirely in favour of the proposal regarding converted tenures, but I am assured that the measure will not work if applied in the half-and-half manner proposed.

38. *Section* 38.—This section also I would omit as likely to lead to much confusion. Throughout Chittagong, and to a great extent in Noakholly, it has become customary for persons originally let in as ryots for purposes of cultivation to sub-let permanently, and sub lessees again to sub-let permanently to under-tenants. A talukdar in Chittagong, a howladar in Noakholly, is often originally let in for the purpose of cultivation: in one case he grants itmams, and in the other nim-howlahs, which are practically permanent leases; the rate, at any rate, is generally fixed, the total rent being increased only by assessment on

increased cultivation. The itmamdars and nim-howladars again sometimes grant sub-leases on much the same terms as their own. It will therefore be evident that to introduce a law fixing seven years as the limit beyond which sub-leases are not to run will be a most disastrous step. It seems to me further that the custom which has grown up here is a true development of the principles which form the basis of the system of landed tenure in Bengal, viz. that, when the original ryot seeks to escape the responsibility of maintaining cultivation, he shall fix the rate at which his under-ryot is to pay him rent; and so on in all the successive grades.

39. One thing, however, must be guarded against, and that is the possibility of a ryot granting sub-leases to relatives and friends at low rates, and allowing his ryoti holding to go to sale, while he reaps the benefit, *benami*, of sub-leases at absurdly low rates. The limit of seven years here prescribed must certainly be eliminated as far as this division is concerned, and in its place some provision made to guard against such fraudulent disposition of property as I have alluded to.

40. *Enhancement of rent.*—The enhancement of rent is not a question which has much exercised the minds of the agricultural community in Chittagong and Noakholly, and though it has attained some prominence in Tipperah, certainly it has not caused the friction and disturbance which is to be found elsewhere. Rents are now no doubt higher than they were 20 years ago, but the enhancement, at least in Chittagong and Noakholly, has been the result of amicable arrangement, and has followed natural laws, one great reason for the absence of any popular excitement in this direction being that a competitive rent is unknown, the existence of culturable waste maintaining that check on rates which it did in olden days before the pergunnah *nirikhs* became things of the past. In many other districts the demand for ryots is great, and this the landlords have taken advantage of to push the letting rates to an extravagant extent, and the question which now demands attention is, shall this state of things continue, or shall the demand on the ryots be subject to some limit by law? It appears to me that the question can have only one answer, that in the interest of the ryot it is necessary that some check should be placed on the enhancement of rates, and that rack-renting should be discouraged.

41. There are some who think that to place any restriction on the letting of land, is an infringement of the permanent settlement, but the argument is not a sound one. At the time of the Permanent Settlement, the zemindar was permitted to make his own profit out of extended cultivation; he need no longer be afraid that increase of cultivation will result in increased assessment for himself; but none the less in settling the waste included in his estate was he bound by certain customary rates which he could not, and dare not, overstep. It is true he was restrained by no legal obligation, but nevertheless he certainly was bound by obligation quite as powerful, viz. custom and his own interests. Such a thing as a competition rate was not contemplated, and now that increase of population has caused a change, which renders the old unwritten law inoperative, there is no reason whatever why the old check should not be maintained by legal enactment, the power to make which was specially reserved at the time of the Decennial Settlement. It is true that the point has not been reached in Chittagong and Noakholly, at which legal interference appears to be called for; the natural check I have alluded to is still in operation, under the action of which a system of land tenure has sprung into existence, admitting of development without any strain on the relations between landlord and tenant, and which has produced a class of peasantry pre-eminent in Bengal for intelligence, independence and prosperity. This is true; but none the less do I advocate the enactment of rules and regulations in this direction, for the time must soon come when their application will become necessary, and it is better to be prepared with a remedy for an evil before it actually happens, than to wait till the strained relation between landlord and tenant force themselves on our notice and demand a remedy.

42. As regards the restrictions on enhancement, they should have reference not to the total rent payable, but to the rate at which rent is payable. This is a remark which is applicable to the Bill throughout, and I would be glad to see an alteration made in this particular. The old custom was to regulate the *nirikh* or the rate of rent, and though we may not be able to re-establish the old customary rate, our efforts should be directed to regulating not so much the total rent, as the rate on which indeed the total rent depends. In many places in the Bill, which I need not more particularly specify, it would be well to substitute "rate of rent" for "rent."

43. As to the grounds of enhancement, I am doubtful as to retaining the prevailing rate. Such a thing as a prevailing rate is certainly recognized in parts of this division; the Chowailia *nirikh* is a household word in Chittagong, and the prevailing rate is perfectly well known in both Chittagong and Noakholly; but this refers rather to the customary rates paid by itmamdars, howladars, and the like, *i.e.*, rather to rates paid for tenures than for ryoti holdings. As regards rates paid by persons who will under the provisions of this law be treated as ryots, they are very variable; and though they do very often approximate to some given standard, do not afford a very safe guide in fixing fair rents, especially in those parts of the country where enhancement has been general.

44. My experience of the Tipperah settlements has led me entirely to distrust the prevailing rate as a ground of enhancement. When that district came into this division, I found settlement proceedings supported by rate reports, showing that the rates adopted were not in excess of those prevailing in the neighbourhood, and yet the ryots I found opposed to the settlements, and the rents unrealizable under them; it was not till I had

personally made enquiry that I discovered the reason, viz. that the prevailing rate was not the realized rate, that it was in fact a fictitious one, which the zemindar realizes if he can. By means of sub-letting to izaradars, the zemindars have, during a period of considerable agricultural prosperity, run up the rates, and now that a period of depression has set in, these rates are more than the ryots can or will pay; the zemindar realizes less, accumulates a large *bakyabaki*, but keeps up the rate hoping to get the full amount if prospects improve. Mr. Reynolds has given other reasons for distrusting the prevailing rate as a ground of enhancement, and I see Mr. Cotton also is opposed to it.

45. Rise in the price of produce is a most legitimate ground for enhancement: but in calculating such increase, the cost of production must not be lost sight of, and that we know has increased very much of late years; the cost of keeping cattle, the expenses of living, and of hired labour have all increased, and these items must be taken as a set-off against improvement in the selling price of produce. In Chittagong I have often been told that it is difficult to make profit on cultivation with "gaboors" (hired cultivators), three for the rupee with their food, *i. e.*, when a hired hand is paid 5 annas per day, with his food found him. No doubt the theory of a fair and equitable rent includes a consideration of cost of production, but that it does form part of the cultivation should be distinctly stated, and not left to the discretion of the court.

The rise in the price of staple food-crops is a most legitimate and admitted ground for enhancement; but there is no reason why the staple food-crops alone should be considered. Jute is in Tipperah certainly a crop that should not be omitted. Increase in the productive powers of the land, due to landlords' improvements, is also a legitimate ground for enhancement, due provision being made for the proper registry of such improvements as I have noticed later on.

46. Enhancement under clause (*a*) of section 43 I strongly object to: it is but seldom that the action of a river benefits a holding; the benefit too (if any) is caused by a natural process quite independent of the landlord, and is as much a ground for enhancement as a favourable rainy season; it is moreover extremely difficult to decide whether benefit has resulted from fluvial action, and to what extent. This ground for enhancement can only give rise to petty and profitless litigation, and may well be omitted.

47. As to the extent of enhancement, I am strongly of opinion that the rate of enhancement in and out of court should be equalized; resort to the courts should not be encouraged; and as a landlord should not be able to get more than a fair rate in court, he should be afforded every facility for arranging a fair rent out of it. I consider the provisions of section 41 very fair and reasonable, and would apply the limits therein laid down to all cases alike. During the past eight years I have been much engaged in supervising settlement work in various parts of this division, and after much enquiry and discussion, the conclusion I have come to is that, as a general rule, it is not safe to demand an increase of more than 25 per cent. on the old rate of rent. I would apply the provisions and limitations of section 41 to enhancement of rent under any head; in other words, the landlord in or out of court should not be entitled to claim at one time a rise in the rate of rent of more than 25 per cent., and if the enhancement is more than two annas in the rupee, there should be no further enhancement as regards that particular holding for a period of at least fifteen years; if the arrangement be made out of court, the contract must be registered. A simple rule of this nature will be better understood, and will work better, than the adoption of different rates under different heads of enhancement with varying conditions for contracts made in and out of court. It is true that contracts have been entered into by the ryots which are manifestly unjust, but the safeguard of registration and ascertainment by the registering officer that the ryot understands the contract will, I anticipate, prove a sufficient protection. As to any abuse of the power of enhancement, I have nothing to say: rents have indeed been raised, but the rise has not been exorbitant and has caused no great friction or popular excitement.

48. *Price-lists.*—Holding as I do that rise in the price of produce is the most legitimate ground for enhancement, it will be understood that I attach great importance to the preparation of price-lists, which will enable the court to judge the fairness of any claim that may come up for decision. The staple food-crop of this division is no doubt rice, though a little gram and other pulses are grown to a limited extent, and a table showing the prices current for rice during the last fifteen years there need be no difficulty whatever in preparing The prices current supplied to Government are in existence, and can form the groundwork for calculation; they indeed show the retail price only, but the entries can be checked by referring to large traders' books. The Collector of Noakholly has prepared such a table for his district without any difficulty, and the same could be done, if necessary, for Chittagong and Tipperah. I consider that important staple crops like jute cannot be left out of consideration; but I believe it would be easy enough to ascertain the current prices paid for this produce during the few years it has been a staple in the district of Tipperah, the only district in the division where it is grown to any extent.

CHAPTER VI.

49. I dissent from the opinion that a non-occupancy ryot must pay whatever rack-rent the landlord chooses to demand; on the contrary, I hold that the landlord is bound to let him in at a fair and equitable rate of rent. There are some who hold that any interference between the landlord and his non-occupancy ryot, any interference with the rates at which

the former leases unoccupied land, is an infringement of the principles of the Decennial Settlement when the waste lands were, it is said, made over to the zemindar to dispose of as seemed best to him, and that the right of Government to interfere was only reserved in favour of occupant ryots In this popular belief I do not concur, as I conceive that the waste lands were not made over to the zemindars to be disposed of as they thought fit, in the sense that the proprietors were entitled to demand a rack-rent from the occupiers. At the time of the Decennial Settlement, there was everywhere an established rate or *nirikh* by which the letting of land was governed, and which the zemindars of the time could not overstep, because, if they did, they could not have obtained tenants. Everywhere in Bengal there was then a large amount of waste fit for cultivation; there was therefore a demand for ryots, and not by ryots for land, and this circumstance exercised and unwritten, but none the less most potent, check on rack-renting. It is an error therefore to suppose that the zemindars were able, in the sense that is now understood, to dispose of the waste as they pleased; they were in fact able to lease only under certain conditions, and there was a most powerful check on their demanding anything but a fair rent. Hence it is that no distinction was ever made in the initial rate between occupancy and non-occupancy ryots; and in fact up to date, in this division at least, no such difference has ever been recognized.

50. The existence in this division of culturable waste waiting for ryots no doubt accounts for this; but even in other districts I suspect, where there is no waste, the custom of letting in occupancy and non-occupancy ryots alike at the same rate is not unknown. Be that as it may, I am quite sure that, if any limit in this direction be imposed, it cannot be justly pleaded that this is the first time the right of the zemindar to demand what rent he pleased from an in-coming non-occupancy ryot has ever been called in question.

The check that used to be exercised is now inoperative, but that seems to me no reason for declining to interfere, and imposing some limits on a demand that may become oppressive. Rack renting is foreign to the whole system of the proprietorship of land in Bengal; the ryot has always been considered entitled to hold land at fair and reasonable rates, and there is no good reason why that rule should now be departed from. I consider that the non-occupancy ryot cannot be in strict justice called on to pay more than any other; but as a concession to popular prejudice, I am willing to allow that he may be assessed at a rate not exceeding 10 per cent. above that paid by occupancy ryots in the neighbourhood.

51. *Section* 38, *clause* ("*c*").—I also object to the power here given to evict simply on the ground that the term of the lease has expired. As I have said, the ryot in possession is entitled to retain possession as long as he pays a fair rent: the idea of a ryot being liable to eviction at the conclusion of a certain period, however willing he may be to pay a reasonable rent, is one quite foreign to the country and the custom of the people. Under the Mahomedans, the ryot was entitled to possession subject to the payment of rent at a certain known rate, and so long as he paid that rent, he was not subject to eviction. At the time of the Permanent Settlement, the State made over to the zemindar only such power over the ryot as it possessed itself; and hence up to date occupancy and non-occupancy rates have always been the same, while it has never been contended that a ryot is liable to dispossession as long as he is willing to pay a fair rent. I cannot, I confess, understand the necessity for departing from those rules now: and though in concession to more advanced views, I am willing to admit a rate for non-occupancy ryots a little above that payable by occupancy tenants, I cannot admit that the landlord has any right to evict a ryot as long as he agrees to pay a fair rent I would exclude clause (*c*) altogether: if the ryot will not agree to what the court considers an equitable rent, then, and not till then, may he be evicted from his holding.

CHAPTER VII.

In Government letter.

52. *Section* 63.—This section cannot stand as it is. An under-ryot is as much entitled to exemption from eviction as a ryot, so long as he pays a fair rent. The principle of right to possession on payment of a fair rent is one that permeates the entire agricultural system down to the lowest link in the chain, and should be consistently maintained. We cannot say to the landlord you shall not rack-rent or needlessly evict your ryot, and yet allow the ryot to exercise such powers over his under-ryots without check.

CHAPTER VIII.

53. *Section* 64.—The 20 years' presumption may be abandoned. During the last 25 years the right to hold at fixed rates has been in most cases enquired into, and it would now suffice to call on all who have such a claim to register themselves once for all. This may lead to some present litigation, but the matter would be settled finally. To this arrangement the zemindar could have no objection.

54. There will probably be a very considerable increase in the number of deposits if this Bill becomes law, more especially under section 73, clause (*c*). In almost every estate there are sharers, and often a great many, while the custom of giving joint receipts is quite unknown; it will be found therefore, certainly at first, impossible for the tenants to obtain joint receipts, and in consequence we may expect a very large number of deposits under this clause. The co-sharers often live very far apart, two or three it may be in the district, another in Dacca, and another in Nuddea, the cost of service of notice therefore under

section 75, clause 2 will be considerable, which the eight-anna fee prescribed in section 73, sub-section 2, will not cover. No provision has been made for recovering all or any part of this amount from the landlords. Is it intended that the service shall be practically gratuitous? I think not. The tenant is obliged to go to the court to deposit, only because of the negligence of his landlord or landlords, and there is no reason why the latter should not pay at least some of the expense which has been incurred on account of their own neglect. At present under the law there is no charge, but notices are in consequence served after a great deal of delay. A notice of deposit is now sent only when a civil court peon happens to be going to that particular locality on other business.

CHAPTER IX.

55. Some of the provisions of this chapter afford an illustration of the difficulty of enacting a law that shall be applicable to Bengal throughout. The construction of tanks and other works for the storage of water are no doubt improvements in dry districts like those in Behar, but they are not required ordinarily in Eastern Bengal. There are already numberless tanks in Tipperah and Noakholly, while in Chittagong the mania for tank-digging has become quite a nuisance, so large an area of arable land is there in that district which has been rendered useless, simply in order that some villager may hand down his name to posterity in connection with such a work. It is true the definition of an improvement appears to place some limit on the execution of such works, but in reality it will not be difficult to plead that some benefit has resulted, or will result, and an opportunity afforded for legal action, which the ingenious Chittagong ryot will not be slow to take advantage of.

56. I was at first disposed to recommend the exclusion of clause (*a*), sub-section 2, section 87, as inapplicable to the districts of this division; but as the excavation of places for storage of water is often necessary on newly-formed chur lands, I have abandoned that idea, but at the same time I do not consider that the ryot should be allowed to commence such works at his own will and pleasure. At present a ryot cannot dig a tank without permission of his landlord, and I consider that he should certainly be bound to give notice of his intention, and an opportunity afforded the landlord to dispute the propriety of the work: when once the work has been executed, it will be too late to discover that it is not required, and is no improvement. While, therefore, I would retain the clause alluded to, I would make it binding on the ryot to give notice of his intention to the landlord

57. Some such procedure also seems called for by the provisions of section 89, sub-section 3, which authorizes the Collector to decide a dispute on this point. It seems useless to allow the ryot to execute the work, and then allow its propriety to be called in question afterwards; it would be better to make any such settlement of the matter a preliminary step; so also as regards landlords' improvements, which it is desired shall be registered; notice should be served on the tenant whose interests are thereby affected.

Under nearly every head of sub-section 2, except clause 5, a question may arise on the part of either landlord or tenant as to the fact of the proposed work being an improvement; and I am convinced that it would be wise, and would prevent useless litigation, to provide in every case for due notice being given to the other party concerned. The erection of a suitable dwelling-house is an exception; about that there can be no dispute; and as regards such an improvement, I would not require the service of notice on the landlord; but as regards the improvements under clause (*a*), their utility must generally be so extremely doubtful that the propriety of their execution should be subject to preliminary enquiry. The same remarks apply with regard to drainage works which may benefit a ryot at the expense of other lands belonging to his landlord. The ryots in Eastern Bengal cannot be allowed to enter on such works as I have alluded to without restriction of some sort on their proceedings.

58. *Section* 96.—I do not consider that the provisions of this section will expose the ryots to any danger of having their rights infringed on by their landlords. I refer of course to the ryots in this division, where I am not aware of the occurrence of any such arbitrary acts on the part of the landlords, as those alluded to in the Government letter. The question of enhancement, and the rate of rent for occupancy and non-occupancy ryots, have already been alluded to in a previous part of this letter, I need not therefore again refer to the subject.

59. *Section* 97. *Sub-division of holding.*—This is a most necessary provision. The custom has grown up of transferring shares in ryoti holdings, but such portions cannot be treated as separate holdings without the consent of the landlord. This is a wholesome restriction, and it is well that it should be made clear that the law, while recognizing transferability, will not recognize the splitting up of a holding into separate shares without the consent of the proprietor.

60. *Measurements.*—I approve generally of the provisions of the Bill under this heading. As regards lakheraj holdings, as a landlord only wishes to ascertain the position of the holding and its aggregate area, while he has no interest in interior details, it will be sufficient if the measurement in such cases extends only to external boundaries. The measurement should certainly be made according to the local standard which all the villagers understand; it is useless to compel a tenant to be present at a measurement, the particulars of which he does not understand and cannot object to. Further, to be of any use practically to either tenant or landlord, the measurement must eventually be reduced to

the local standard; it should therefore be made according to it at first, and, if necessary, converted into English measure afterwards. An entry showing how many standard bighas there are in a holding conveys no meaning to a ryot, and is useless to a landlord for all practical purposes.

61. *Managers.*—I approve of the provisions of the Bill. The existence of sharers in estates, and disputes amongst them, is often the cause of much oppression to the ryots and disturbance of the public peace; it should therefore be in the power of the authorities to provide for the maintenance of peace and order by the appointment of managers. The necessity for vesting the authorities with this power has long been acknowledged, and has been exercised since 1812; the present provisions are really only an expansion of the principles of Regulation V of 1812. I fail to see how the appointment of a manager can lead to difficulty and friction: such a step will only be taken when difficulty and friction to a considerable extent have already arisen. There is always of course a fear that a manager may abuse his trust, but the same fear may be expressed regarding a proposal to take an estate under the Court of Wards, and is not one that can be held to outweigh the advantages to be gained by putting an end to the disputes of co-sharers in an important izmali estate.

CHAPTER X.

62. *Record of rights.*—The provisions of this chapter are most important as affording a means whereby a record may be made after authoritative enquiry of the rights in their holdings possessed by the entire agricultural community in Bengal. They are also important as providing a means for allaying that spirit of discontent and combination which is so rife in Eastern Bengal, and which has formed subject for comment in succeeding administration reports.

63. The want of any authoritative record regarding the rights possessed in their holdings by the various classes of the agricultural community in Bengal has long been an acknowledged blot in our administration; but the work of effecting a remedy is truly a gigantic task, and I fear, if attempted on the proposed lines, an impossible one. It is proposed to record not only the nature of the right possessed by the occupants of holdings, but also the amount of rent payable by them, and the conditions under which it is payable; to prepare a record of this nature regarding even one district will, I apprehend, involve an expenditure of labour, time, and money out of all proportion to the value of the results to be secured by the work when accomplished. It is not quite clear what is intended by the word payable in clause (*e*), section 111; it may mean the existing rent or the rent which the land is capable of paying. The phrase occurs in the present Settlement Law, Act VIII of 1879, and has there always been understood in the latter sense, including an enhanced rent. I apprehend that here the existing, and not any enhanced, rent, however fair, is intended; but even then I foresee the immense difficulty of making any such record, for the amount of rent is the very essence of the dispute now going on in Eastern Bengal between landlord and tenant, and any attempt to settle that point will lead to a protracted dispute with regard to nearly every entry; so that, if we take in hand the preparation of a record of rights, containing all the particulars noted in section 111, we will in fact have at the same time to make a settlement of rents, and determine what is to be entered as a fair and equitable rent.

64. The task would be easier in Chittagong and Noakholly, where tenure-holders at fixed rates with registered pottahs intervene between the landlord and actual cultivator; but in Tipperah it is quite different; there the complaint of the landlords is general, that the ryot disputes the rate of rent, and I believe the majority of contested cases turn entirely on the question of the amount of rent actually realizable. In every estate the amount of *bakyabaki* (outstanding balance) is large; the zemindars do not collect the amounts shown in their papers, and if they go into court, the ryots plead that the rent shown on the papers is a fictitious and not a real demand. During the last ten years the cultivation of jute, and the occurrence of the Bengal and Madras famines, increased for a time the profits of agriculture which the zemindars sought to share in by raising the rates; being at the time able to meet such enhanced demand, the ryots made no objection, and so enhanced rents appeared on the books by tacit consent. Now that jute sells at Rs. 3 or Rs. 2-8 per maund, instead of Rs. 5, and the price of rice is no longer high, the ryots cannot pay the amounts entered against them, and in consequence the entered rent is not now realized even if it was some years ago.

65. The vicious system of granting farms, to which I have alluded, has enabled the zemindars to frame rent-rolls which show the uttermost farthing that can be got out of a ryot when agricultural prosperity is at its highest point; but it is impossible to maintain that such rents should be entered as payable in any public record.

In many cases the zemindars find that they cannot now let the izarahs at old rates; the izaradars have got what they could in their three or four years leases, and knowing that it would not pay them to renew have declined settlement, leaving the zemindar with a stith which he cannot realize amicably, and which is disputed if he goes into court.

66. I am quite certain that no record of rights on the lines proposed could be made in Tipperah, or anywhere in Eastern Bengal, without the majority of entries under clauses (*e*), (*f*), (*g*), (*h*), section 111, being keenly contested. It would be possible to make out a record which will show only the status and position of the tenant, though even that would be a task of no mean magnitude; but once we attempt to touch the question of rent, we

enter on an enquiry that covers the whole dispute which is at present agitating the agricultural community in Lower Bengal, and putting such a strain on the relations existing between landlord and tenant It may be necessary to enter on a work of such magnitude for the preservation of the public peace; but I do not consider that anything short of a grave crisis will be held to justify our taking in hand so intricate and delicate an undertaking. If it be thought advisable to retain this portion of the Bill, then I consider that the record of right should contain only the particulars contained in clauses (*a*), (*b*), (*c*), and (*d*), of section 111; any enquiry into and record of the rent payable contemplated in the other clauses being left to be undertaken when a settlement of rates may seem to be called for. As matters stand now, I do not see how otherwise a record of rights can be effected.

67. *Settlement of rates.*—As regards the rest of the chapter, I approve generally of the provisions of the Bill, and consider that the authority thereby given to interfere in case of need between a landlord and his tenants is a most necessary and useful measure. I would, however, suggest an amendment to section 118, sub-section 3. I do not understand why the revenue officers should be restricted in altering rents to the case of tenure-holders and occupancy ryots; he has to deal with non-occupancy and under-ryots, so far as regards the entry of their names and extent of their holdings; and there is no reason why he should not, if necessary, fix a fair and equitable rent for them also. Subject to the provisions of the Act, I would empower him to fix the rent of any tenant. There are distinct rules laid down for the ascertainment of the rent payable by both under and non-occupancy ryots, and when it becomes needful in the interest of the public or the State to order a settlement of rates, there seems no reason why non-occupancy and under-ryots should be exempted from the operation of this most important provision of the law.

68. It will be necessary to invest the revenue officers with full powers to enforce the attendance of parties and witnesses, to punish non compliance with orders, to deal with, recusancy in the non-production of papers, accounts or other evidence by infliction of a daily fine or otherwise: in fact he must be invested with all the powers which may be exercised under Regulation VII of 1882, and other Acts and Regulations relating to settlement of land. These powers should be specially specified in the Bill, as it will not, I imagine, be sufficient to leave this question to be dealt with in the rules to be hereafter issued by the Local Government.

69 *Special Appellate Court.*—I approve of the proposals regarding an appeal to a special Judge; it is most necessary that any orders passed in such cases should be heard at once and dealt with promptly, and that the power of appeal from court to court should be curtailed. There is no proceeding which the native of these parts certainly so delights in as to postpone a settlement by taking his case from court to court This we have learnt to our cost during the late settlement operations A ryot will hold aloof from the settlement officer altogether during the proceedings on the spot; he can then ask the Collector for local enquiry, take his case on appeal to the Commissioner and then to the Board; he can then start afresh with a suit before the Munsif, which he can take on appeal to the Judge, and perhaps to the High Court. The shortening of this chain of litigation is a most judicious measure.

70. *Publication of record.*—The final publication of the record should end the proceedings; they should not be open to any further question, except under very exceptional circumstances and on satisfactory evidence that a grave error has been committed. The local enquiry, and local publication of the results of that enquiry, afford ample opportunity to all to ascertain the nature of the entries regarding themselves, and to object if they wish to do so; when the proceedings have been finally closed, therefore, they ought not to be lightly reopened. It is not enough to say that the entries shall be presumed to be correct until the contrary is proved; a tenant will often, if the opportunity be given him, remain quiet to the very last, until after final publication, before he will attempt to prove the contrary.

71. *Settlement of Government estates.* Further, I am very strongly of opinion that the provisions of this chapter should be made applicable to all settlements and re-settlements of Government estates, and that, when any estate becomes for any reason open to settlement, it must be dealt with in strict accordance with the provisions here laid down, the Collector or Revenue Officer appointed for the purpose making in fact a settlement of rates for the area in question in accordance with the provisions of this Act, and being guided by them in dealing with such questions as enhancement of rates, the imposition of a fair rent, &c. In this matter of settlements, it has been before now objected to me, that it is not fair to bind the landlord with rules which the Government are not bound by in making settlement of their own lands, and that the objection is not one that I feel disposed to gainsay. If the rules herein laid down are fair in the case of the landlord, other than Government, they cannot be considered inapplicable in the cases where Government happens to be the landlord. Speaking for myself, I can say that I am confident that a Collector duly armed with authority to enforce attendance of witness, &c., could make a most satisfactory settlement or re-settlement by following the procedure laid down in Chapter X, and being bound by the general provisions of the Act. Had this law been in force some years ago, when the settlements in Chittagong and Noakholly were first started, and had its provisions and the principles enunciated therein been followed, the confusion would not have arisen which has resulted from attempting to enforce the provisions of Act VIII of 1879, an Act which I am glad to see is to be repealed. There is to my mind no excuse for allowing it to be thrown in our teeth that there is one law for the Government and another for the subjects of Government.

CHAPTER XI.

72. *Table of rates.*—I do not consider the retention of this chapter necessary: rates are governed by various causes which are of purely local application, and it would be extremely difficult to fix rates applicable over anything but very limited areas: the work also would not only be difficult, but of very little practical value when done. These provisions would only be useful in determining a question of enhancement on the ground of prevailing rates; but that ground of enhancement I see good reason for suspecting. The provision of the present chapter therefore appear to be unnecessary.

CHAPTER XII.

73. The provisions regarding the record of proprietors' lands appear to be reasonable. There are, however, no such lands in the district. I need not therefore offer any remarks under this head.

CHAPTER XIII.

74. *Distraint.*—On this subject I need offer no remarks, as I have had no practical experience of the working of this method of realizing arrears of rent. The proprietors in this division, certainly in Chittagong and Noakholly, are too much afraid of their ryots to resort to this means of realizing their demands; and if passed, I believe the provisions of the law will continue to be as inoperative as they have ever been. The only suggestion I have to offer is that, as in a suit for rent, so in an application under section 140, the applicant must certify that he has been duly registered, otherwise the application will be rejected as in formal.

CHAPTER XIV.

75. *Section* 163, *clause* (*b*). *Judicial procedure.*—The plaint should also contain a statement to the effect that the plaintiff has been duly registered.

Clause (*c*).—The summons should be ordinarily for final disposal; if it is found, after examination of defendant, that the dispute is one which requires the fixing of issues, the court may subsequently, by written order, postpone the hearing; but as a rule the first hearing should, if possible, be for final disposal.

Clause (*e*).—The court should be directed to examine the defendant orally, and record briefly what his objections to payment are, and how he can support such objections. It is useless to leave the filing of a written answer to the discretion of the court: such permission will result in the admission of a written answer in nine cases out of ten. An oral examination of the defendant should tend to the speedy despatch of rent cases and simplification of procedure: with the plaint before him, the presiding officer can ascertain in a few words what the ryot's objection is, and how he intends to support it, and can thus confine the real question at issue within reasonable limits. A written answer should be barred except in exceptional circumstances, and the oral examination of the parties face to face insisted on.

76. I do not consider that it would be advisable to allow landlords to bring suits against their ryots collectively; it often does happen now that the court finds that several suits are of the same nature, and in such cases it is customary to try analogous suits together, to be governed by one decision. This may be now made lawful at the discretion of the court, and in such cases a refund of part of the value of stamp, or some similar indulgence, may be allowed.

77. I approve of the provisions of sections 164 and 165. It is right and proper that, when the defendant admits his liability, he should be compelled to deposit the amount admitted to be due. I approve also of the restriction on appeal provided by section 168, and the rules in case of ejectment, section 171.

CHAPTER XV.

78. *Sales for arrears under decree.*—I do not entirely approve of the provisions of this chapter. The proposal is to exempt registered and notified incumbrances from annulment in the event of sale, except in cases where the bid at a sale does not cover the amount of decree and costs, when even a registered and notified incumbrance may be annulled by the auction purchaser. I object to the necessity for notifying registration of incumbrances, and I would make certain registered incumbrances liable to annulment under no circumstances whatever. Registration under the law should be held to be sufficient protection in the case of sub-tenancies. I see little necessity for notice to the landlord in such cases. Service of notice in this country is really no protection whatever, for with witnesses and serving officers alike venal and corrupt, it is seldom possible to know with any certainty that notice has really been served. Registration is a public act, and in the case of sub-tenants I see no object whatever to be gained by notice to the landlord. It is necessary to guard against the creation of *benami* sub-tenancies at fraudulent rates of rent, but otherwise a duly registered sub-tenancy should be protected, and liable to annulment in no case whatever; otherwise there will always be a temptation to suppress notice of a sale by the decree-holder in order that the bid may be so low as to enable him to re sell and buy in with power to annul. Take the case of a talukdar who has let his land to two or three itmamdars on registered permanent leases at fixed rates of rent. These are sub-tenancies, but do not fall under any of these heads noted in section 176 as protected interests; if the decree-holder, the landlord, can only

manage to suppress notice of the sale, he may secure a re-sale, which will enable him to buy in the taluk free of all incumbrances, and to sweep away the itmamdars altogether. If my suggestion, made in a previous paragraph, be followed, the law will make registration of tenures of all descriptions compulsory, and also public; and I consider that all such registered tenures ought to be exempt from annulment like protected interests. This is necessary, otherwise the existence of a very large class of sub-tenancies in Chittagong would be endangered.

79. As to other incumbrances, I consider that registration without notification is sufficient, with a proviso as to fraud. Section 175, clause (*a*) would run thus—"A registered incumbrance within the meaning of this chapter shall not be so annulled except in the case hereinafter mentioned in that behalf, except on proof of fraudulent creation of such incumbrance. The creation of a sub-tenancy, at a rent which was not fair or reasonable at the time of its creation, is a fraud within the meaning of this clause." Again, section 177, clause (*f*) will have to be altered by the omission of the latter half of the clause.

CHAPTER XVI.

80. *Summary sale.*—As regards section 209, I need only say that I consider the provisions as to summary sale of patni taluks ought to be in some shape extended to all tenures, the registration of which is compulsory under the Act.

CHAPTER XVII.

81. *Section* 212 is hardly precise enough, and, as it now stands, may be held to extend the exemption to all leases for the reclamation of waste. It is fair enough to exempt from the provisions of this Act all lands which are under reclamation, and which for the time being may be held under peculiar conditions; but as soon as land has been reclaimed, there is no reason why the provisions of this law should not apply. Our noabad taluks in Chittagong are in a sense contracts for reclamation of waste, but there is no necessity for excluding them from the operation of the Rent Law.

82. *Section* 212, *sub-section* 1.—The provisions as regards 12 years' occupancy in chur lands are fair. The word "same" will, however, have to be inserted; it must be occupation of "the same land" which confers the right. As I have noted elsewhere, the same rule may be extended to lands let year by year to fluctuating ryots: if a cultivator continues on the same land for 12 years, it may be assumed that he intends to settle. It is of consequence to encourage the settlement of ryots, and to discourage nomadic and fluctuating cultivators.

83. *Section* 214.—I leave it to others to discuss the conditions of the *utbundi* and *hal hasila* system, both of them mere remains of the old system which still prevails in Chittagong of leasing to unsettled ryots just as the large jotes of Dinagepore and Rungpore are traces of the old system of letting blocks of waste to ryots who undertook to maintain cultivation. Both Dinagepore and Rungpore are districts that have only lately been rescued from jungle, and it is not surprising that traces of the old convenient method of dealing with waste should still survive in them. There is a tendency on the part of the korsha ryots and jotedars, as these fugitive cultivators are called in Chittagong and on the Noakholly churs, to settle, and the custom is growing up in the more settled parts to claim on the one hand, and to allow on the other, an occupancy right after 12 years' occupation. This disposition should be encouraged.

84. *Section* 216.—The question of bastu is not one that has forced itself into notice in this division. In Chittagong ryots mostly hold their bastu on a separate lease, which is generally permanent. In Noakholly and Tipperah bastu is held as part of the holding, and at recognised rates. There has been no attempt on the part of the landlords to unduly enhance the rate of bastu as alluded to in Government letter. In Chittagong and Noakholly ryots are too much in demand for a landlord to be able to afford to frighten them away by excessive demand on account of bastu, and even in Tipperah ryots are not yet so numerous that a proprietor can afford to part with his tenants. As regards this division, therefore, no particular restrictions as regards bastu appear to be required.

85. As a matter of general principle, I think the old rule was the right one, viz. that homestead lands should be free of assessment. That certainly was the old rule under the Mahomedans, for we find in the settlement papers of 1763 an allowance for khanabari made to every talukdar, *i.e.* to every ryot, to every person who undertook to maintain a certain area in cultivation. The settlement in which we find this allowance granted was a settlement of the whole district of Chittagong, and it was made in 1763, only three years after the district was ceded to the British, when our officers were mere agents of the Mahomedan power, and must have carried out their operations in accordance with a native notion. Even in deeds of sale for arrears and such like, it was long ago customary to exclude the defaulter's khanabari. I have also seen kabulyats given to a purchaser of a permanently settled estate by an in-coming tenant, wherein the khanabari of the former talukdar is excluded from the operation of the lease. In olden days it was of importance to get ryots to settle: it was politic therefore to allow the homestead lands free of assessment: but the spread of cultivation speedily obliterated the custom, to discover traces of which we must refer to the settlement papers of 1760 and 1800, and to the views expressed by the revenue officials a century ago, and once abandoned the custom cannot now be revived. If

the power which has gradually accrued to the landlords of assessing bastu is abused, no doubt it may become necessary to devise some restriction on the assessment of this particular rate; but, as I have said, I do not know of any case where the power has been abused.

CHAPTER XIX.

SUPPLEMENTAL.

86. *Section* 222.—The provisions of this section will fall very hard on joint proprietors of small estates, of which there are hundreds in Chittagong. It is right enough to direct that they shall jointly sue in a case of enhancement, but I would relax the rule as far as suits for arrears are concerned: to insist on the enforcement of the rule as it stands would practically be to bar these small proprietors from obtaining access to the courts for recovery of rents. It is true that the existence of co-sharers does often result in the ryots having to pay more than is actually due, but any flagrant case of the sort can always be met by the provisions of Chapter IX, sections 1 and 2; while, generally speaking, the relief that will be afforded to the ryots, by being sued by all the sharers jointly, will not be in any way commensurate with the trouble and harassment that will be caused to small proprietors.

87. As regards the questions raised in the initial paragraph of the letter from Government of India, the points to which my attention has been particularly directed are 2, 3, 5, and 6.

Point (2).—There are, so far as I can discover, no such taluks in the districts of Tipperah and Noakholly. In Chittagong, of course, they are numerous; in fact the permanently settled estates in that district are a mere aggregate of taluks that were separately assessed in 1763, and up to the time of the Permanent Settlement held direct from Government. I do not consider that it would be in any way improper to subject them to summary sale for arrears of revenue; they are all really tenure-holders, and, as I have already reported, I am of opinion that all registered tenures should be subject to some form of summary sale. All the old taluks bear very small jummas, and have no excuse whatever for default in payment of rent: the extension of the provisions of the Patni Sale Law to them therefore is just and proper.

Point (3).—I see no necessity for making such summary procedure applicable to the recovery of Road cess and Public Works cess; the present procedure works satisfactorily, and I see no reason for introducing any change.

Point (5).—As I have said, I consider that the principle of the Bill as interpreted by me, and the provisions thereof as altered by me, may be made applicable to all the special tenures to be found in Chittagong and Noakholly, or I may add elsewhere. I have reported on this matter in the body of my report, and need not go over the ground again.

Point (6).—I have recommended the excision of the chapter regarding pre-emption. If it is still considered necessary to retain those provisions, I hope they will not be extended to this division: occupancy rights have there been transferable without hindrance or objection for many years, while howlahs, nim-howlahs, and such like holdings have been transferable from time immemorial. To introduce the chapter regarding pre-emption therefore into this division would be to introduce confusion, and to invite litigation and strife.

88. In conclusion, I may be allowed to express a hope that, after this thorough sifting and consideration of the provisions of the proposed law, some definite conclusion will speedily be arrived at, for delay in the disposal of this question is leading to serious difficulties. Everywhere the country is being filled with vague rumours; and distorted accounts of the intention of Government, which exercise the very worst effect on a credulous and ignorant population., are rife. The disposition to resist even just demands is spreading; and I have been credibly informed of a case in which the tenants of an estate, whose rents have not been raised for 15 years, and who have been allowed to enjoy all the profits which the introduction of jute cultivation, and the rise in price of rice have caused to accrue during that period, have lately begun to withhold payment of rent, in obedience to vague rumours that Government has exempted the ryots from all obligation.

C E. G.—Reg. No. 5297C—327—15-8-84.

No. 271GC, dated Chittagong, the 10th July 1884.

From—H. J. S. Cotton, Esq., Offg. Commissioner of the Chittagong Division,

To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your circular No. 3T—R, dated 24th May 1884, I have the honour to submit, for the consideration of Government, a copy of a memorandum I have recorded on the subject of the Tenancy Bill.

2. I have not been able to confer with the Collectors of Noakhally and Tipperah, though I have received reports from them on minor points. Mr. Lowis, who is about to resume charge of this division at Commillah, will have an opportunity of consulting Mr. Cooke, who is now Collector of Tipperah, and was lately Collector of the Noakhally district. He will then add such further remarks as may seem necessary.

3. Under the circumstances, I have thought it right to submit the present memorandum on my own account, and of that of the Collector of Chittagong, to whom I am indebted for suggestions, and who agrees with me substantially on all points.

MEMORANDUM ON THE BENGAL TENANCY BILL, BY MR. H. J. S. COTTON, OFFICIATING COMMISSIONER OF CHITTAGONG.

During my short incumbency of the Commissionership of this Division, I have been busily engaged with the Annual Reports in addition to the ordinary current work, and I have had no time either to consider or report adequately on so large a subject as the Bengal Tenancy Bill. But I do not think I ought to make over charge without recording some remarks on the subject, and I therefore leave the following expression of my opinion on certain points for the consideration of Government. I have had the advantage of conferring with Mr. Samuells, the present Collector of the Chittagong district, and am authorized to say that he concurs generally with my remarks.

PART I.

Remarks relating more particularly to the Chittagong District only.

2. I observe that the Select Committee desire to be informed whether there should be any special saving in the Bill in regard to the special tenures under which land is held in the Chittagong Division, and I find that Mr. Lowis has already reported to Government on this subject in his letter No. 335GC, dated 30th June 1883. I may be permitted to say that I entirely agree with the historical review which Mr. Lowis has there furnished, and with the conclusion at which he arrives.

The talukdari system.

3. The talukdars of Chittagong enjoy a title based on original reclamation of the soil. The taluk is the unit of the Chittagong revenue administration: it is still a valuable holding, and its possession still implies a proprietary interest. A taluk is transferable and heritable. A taluk carries with it the right of fixity of tenure, fair rent and free sale. The entire cultivated area of Chittagong is, roughly speaking, divided among the holders of these taluks, most of whom cultivate personally. The account given of this district by the Collector, Mr Fryer, on the 25th August 1794, the year after the Permanent Settlement, is equally applicable at the present day. He writes:

"The minute sub-division of the landed property of this province has given existence to a body of landholders unknown elsewhere. Though nominally mere tenants of a larger estate, they in fact feel themselves confirmed, by custom and series of precedents of the adawlat, as the actual proprietors of the soil of even the smallest portion into which land can be divided. Secure in their possessions, independent of and unconnected with each other, each individual family forms an independent household in the neighbourhood of its little hereditary estate, and supports itself on the surplus produce of its cultivation."

The average size of a taluk is not more than five or six acres; but where the holding is of any size, or where a person owns more than one, a portion only is reserved as *nij-jote*, and the rest is leased to itmamdars or cultivators.

4. An itmam is like the taluk *kaimi*, and carries with it fixity of tenure and of rent. The itmamdar is also generally a cultivator, but he enjoys the same power as the talukdar of granting permanent leases to under-tenants; hence the creation of dar-itmams and kaimi ryoti leases. According to the practice of the district, these permanent holdings are brought by the terms of their leases under the putni procedure, and are saleable for arrears of rent under Regulation VIII of 1819.

Permanent leases.

5. In the chain of subinfeudation from the original reclaimer downwards there is always a lease which is generally permanent In Chittagong parlance the lease is granted "*istimarari daimi kaimi putro putradi.*" The total number of perpetual leases registered in the offices of the Registration Department in the Chittagong district during the past sixteen years is 248,043. The number of leases for a term of one year and upwards (the registration of which is also compulsory) is only 8,095.

6. It has repeatedly been pointed out that this wide dissemination of a permanent interest in landed property has evinced itself in the gradual accession of wealth and influence among these small porprietors, and in the marked development of material prosperity

throughout the district. There are no large zemindars : in most cases the talukdars cultivate with their own hands : in many cases the zemindars (or turrufdars as they are called) do the same : the agricultural wealth of the district is distributed among the peasantry.

7. In this respect the economic conditions of Chittagong may well be envied by the impoverished populations of Behar and Upper India : they are as unlike those of Behar as the *petite culture* of France is unlike the system of large proprietary holdings and farms in England. The oppression of the tenantry, which appears to be common in Tirhoot, is unknown in Chittagong. The necessity of a law of tenant-right arising from the necessity of dealing with such oppression does not, therefore, exist in Chittagong. The aim of the present Bill, as stated by Government, is "to remedy abuses which unquestionably exist very widely, and whose continued existence is incompatible with the peace and prosperity of these provinces." Such abuses do not exist in Chittagong : in their place peace and prosperity already prevail. There are no complaints* and there is no demand for legislation. The present Bill is believed to be drafted with more immediate reference to the requirements of Behar. But I do not hesitate to say that no Tenancy law can be comprehensive enough to deal with two such entirely different systems as those of Behar and Chittagong, and it is, I fear, inevitable that the introduction of an inapplicable law into a district like Chittagong will result in the disturbance of order, in the misconstruction of local custom, and in the deplorable increase of litigation.

* I exclude from these remarks the Noabad mehal, the property of Government The recent settlement proceedings have created widespread dissatisfaction and require revision.

8. The occupancy right regarding which the framers of the proposed law are so solicitous—a right based on mere occupation of the land or residence in the village—counts for very little in the Chittagong district. The pivot on which all hinges is the talukdar, and on those who hold from him partaking of his privilege of fixity of tenure and of rent.

9. The jotedars or tenants-at-will, who hold on a fluctuating and unsettled tenure under the talukdar, itmamdar or kaimi ryot, as the case may be, usually cultivate on mere verbal agreements, and are not responsible for more than the year's rent, and may cultivate more or less land at pleasure. The amount of rent payable will vary year by year : it is a mere matter of arrangement : they will pay heavily on a good crop, and lightly in a year when they have reaped less, or got lower prices, or have left a larger area uncultivated. This system could not possibly exist in a country where the margin of cultivation had been nearly reached. It is a system which might be open to abuse where estates are large and cover a continuous tract of territory. But these are not the conditions of Chittagong. Here the zemindars compete for ryots, and the latter are almost masters of the situation. "Here," as Mr. Lowis writes,—

The jotedars or tenants-at-will.

"If a cultivator cannot come to terms for a patch of land under one proprietor, he is certain to find another field within a stone's throw, with the owners of which he can settle, and failing that, half a dozen others, equally near, anxious to secure him. Another check on rack-renting, too, is to be found in the vast number of small kaimi permanent properties that exist in the district. There are a vast number of lakhiraj and resumed holdings, minute taluks, small permanent ryoti tenures, the holders of which take up land as jotedars in addition to their own holdings ; but these men are not driven to take up further land ; they could obtain a subsistence by cultivating their own small patches, and so only engage for the further portions, if they can get them, at a rate which they calculate will leave them some profit. If the talukdar is obdurate, land even in a good situation will not to be taken up.

Commissioner to Board, No. 72Ct., dated 8th December 1882, paragraphs 42, &c.

"To quote an instance which came under my own observation. The land under the hill on which my house is situated in the station is owned by a couple of separate talukdars, who hold some seven or eight bighas respectively : we will call them A and B. The land belonging to A was cultivated jotedari last year by a neighbouring kaimi ryot, who took it at Rs. 4 per kanee ; this season the cultivator told the talukdar that the rice market was low, and that he could not afford to give more than Rs. 2 8 per kanee. After some discussion and threats of giving up the land, the cultivator finally took it at Rs. 3 per kanee. The cultivator on B's land pleaded in the same way for a reduction on last year's rent, but as the talukdar would not reduce enough, he did not engage The season began to pass, and finding that no one else would take his land, B offered it to the old cultivator at a reduction on the latter's original offer ; but he would not take it even then, saying that the season was far advanced, and the rains did not promise to be favourable. The consequence is that B's holding is lying waste, and he will derive no profit therefrom wherewith to meet the demand from his turrufdar. Under a system which thus checks all disposition to rack-rent, and enables a ryot to take up as much or as little land as suits him, and at rates which are likely to be remunerative, it may well be believed that the ryot does not attach much importance to the right of occupancy as set forth in our laws ; or that, unless he can get a permanent lease, which will render him quite independent, he should be indisposed to bind himself definitely to a particular field, for which he will have to pay rent whether he cultivates it or not."

The practice of the cultivators contracting or extending their cultivation, according to convenience, is general in the Chittagong Division, and it will be found to exist everywhere where land is plentiful, and the demand is for ryots to bring the arable waste under cultivation. It is rendered possible by the elasticity of the arrangements with the rent receivers, who are able to recoup themselves by heavy assessments on the richer lands and in the more prosperous years for the remissions which are necessary at other times and places.

11. From the nature of the case, it is unnecessary to make any provision for the protection of such ryots. The status of these jotedars or Noabad chashas is similar to that of the paikast ryots in Bengal at the time of the Permanent Settlement. There are no provisions for the protection of such ryots in the Permanent Settlement Regulations There was at that time no necessity for such provision. The country was then three parts waste, still slowly recovering from the effects of famine; the demand was on all sides for ryots to bring the land under cultivation; the rates of rent were necessarily low; as soon as the demand of rent was raised above what a ryot was willing to pay, he would migrate to the lands of a neighbouring zemindar, where he would be welcome. But the Government reserved* to itself the power to interfere for the protection of the tenantry, if at any time it became necessary to do so. In due course, with the spread of cultivation and simultaneous increase of population, this time arrived: it was the ryots now who clamoured for land, not the zemindars who sought for ryots, and the zemindars seizing their opportunity, raised the rents and in some cases oppressed their tenantry. The Government then exercised its power and passed the Rent enactment of 1859, and now further legislation is contemplated in the same direction.

Clause 1, section 8, Regulation I of 1793.

12. But in Chittagong, and I will add in other parts of this division throughout the new alluvial formations of Noakhally and Tipperah, population is still sparse, land still plentiful, and the demand is still for ryots to bring land under cultivation. Even if land on the spot were not available, the neighbouring district of Arracan is sufficient to supply the people with agricultural employment, and with land also, for the trouble of asking for it. There is no rack-renting in Chittagong, for there is always the probability that if the rent is fixed too high the land may not be taken up; and if not engaged for, the loss would of course fall on the talukdar or howaladar, as the case may be. Mr. Lowis furnishes a remarkable illustration of this state of things in regard to lands in the very station of Chittagong itself.

13. The Chittagong ryots are in short entirely independent of the influence and interference of their zemindars, and cultivate as they please on a yearly tenure. It is not surprising that under such circumstances they do not attach much importance to the right of occupancy as our law defines it. They are naturally indisposed to bind themselves definitely to a particular plot of land for which they will have to pay rent, whether they cultivate it or not. Their real ambition is to get a permanent lease, and then to sub let this to other ryots for cultivation; but if they cannot get this, they prefer to make their own terms with their landlord for such lands as they may themselves cultivate.

14. It is impossible, as Mr. Lowis observes, for one who has not had practical experience of this district to understand the way in which land is mixed up in it—a *kaimi* ryot in addition to his own patch cultivating as chasha lands belonging to a neighbouring talukdar; an itmamdar letting his lands which are at a distance from his house, while he cultivates as chasha land belonging to some one else nearer home. Every village comprises as a rule several estates. Many estates consist of lands in thirty or forty villages, a few fields only in each; without changing his residence, therefore, a cultivator could cultivate fresh land every year, and at the end of twelve years acquire occupancy rights in them all. He would therefore incur liabilities which he by no means desires, and which would prove very embarrassing to him in an unfavourable season. At present he is a free agent: he can come and go when he likes: he cultivates such lands as suits him, and it is not to his advantage to surrender the privilege of this independence for the acquisition of an occupany right.

15. This, however, represents by no means the only complication which is likely to ensue under the proposed Bill. It has already been decided by the authorities that a talukdar who cultivates his own land for twelve years is saddled with occupancy rights in his own taluk. The cases in which these orders were passed relate to talukdars holding directly under Government as zemindar; but the principle laid down will apply equally to all cases, whether the talukdars hold under Government, or under a private proprietor. The facts of a typical case are given below.

16. There is a taluk called Idris Hari in the island of Kutubdia, in which there are 15 joint undivided talukdars all jointly paying their rent to Government, and within that taluk each of the joint talukdars has possession of certain lands of which he is recorded in the old settlement papers as *dakhalkar*. He either cultivates these specific lands himself, or sub-lets them to under-ryots on his own account; but the profits from these lands are entirely his own, subject only to his joint liability for the rent of the whole taluk to Government. Unfortunately under these circumstances the word "occupancy ryot" was introduced into the correspondence. This word and the word "tenure-holder" have lain like the trail of a serpent over all the recent settlement proceedings of this division. These legislative fictions are the source of all our difficulties. They are the result of applying provisions of the law which are applicable to other parts of Bengal to portions of the province where they are wholly inapplicable A blind adhesion to theoretic symmetry will always lead to practical confusion and disorder: and so it came to pass that in the taluk of which I am speaking, and in all others similarly situated, the talukdars in direct possession of their own lands are now treated as occupancy ryots, subordinate to themselves as holders of the taluk. A fictitious and artificial arrangement has thus been already introduced into the district; but the provisions of the present Bill not only recognize and sanction such an arrangement, but do more than this. If the present Bill is extended to Chittagong, these men, who are jungleboorce talukdars, will still be recognized in their taluki capacity as holding a valid title to land in respect of which they are jointly and severally liable to the

payment to Government of revenue or rent, in default of which the whole taluk will be liable to be sold; in another capacity, in regard to the specific lands which each man may cultivate, he will be regraded as an occupancy ryot paying rent both to himself and his co-sharers, and subject for that land to all the provisions of the Bill relating to occupancy ryots; in a third capacity he will, in case he sub-lets more than half of these specific lands, become a tenure-holder, holding under himself and his co-sharers, and while still liable to enhancement at the hands of his co-sharers as an occupancy ryot for all of these specific lands, he will in other respects be treated as a tenure holder even to the liability of summary sale for arrears of rent from his occupancy holding or tenure. It is hard to imagine a more bewildering combination. The provisions of the Bill relating to the "convertible tenure holder" are too labyrinthine to work successfully in any district; but in Chittagong they would simply not work at all. The definitions of tenure-holder and of ryot in the Tenancy Bill, and in the existing Settlement Act VIII (B.C.) of 1879 which this Bill proposes to repeal, are altogether beside the mark. The truth is that a talukdar is a ryot in so far as he is a cultivator himself; but he is much more than a ryot: he sub-lets land also, and there is no reason why a cultivator or jotedar who holds under a talukdar without a lease should not acquire occupancy rights if it is to his interest to do so. On the other hand, a talukdar is a tenure holder; but he is much more than a tenure-holder, he collects rents of course if he sub-lets, but he cultivates himself also. He is neither a tenure-holder nor a ryot, but both, and he is more than both, for his status is inherently higher than that of a ryot. It is easy therefore to see that the provisions of a law must be inappropriate which recognize his existence in only one or other of these capacities, or in both of these capacities only in a manner which is too intricate to admit of the separation of the attributes of either.

Bastoo lands.

17. The following remarks which it occurs to me to make on the subject of *bastoo* lands relate to the Chittagong district only. The old practice was to hold these lands rent-free and according to the old rates of rent paid by the talukdars—one and a half kanees per droon (a proportion of a little more than 10 per cent) was always allowed rent free as *khanabari* or homestead. The talukdars, itmamdars and kaimi ryots of this district still hold their homestead as part of their holding and pay no special rent on its account.

18. The Noabad talukdars under Government are assisted at an all-round rate on their cultivated lands, and in the settlement of 1848 all homested lands were included in and assessed at the same rate as the cultivated area. This was the result of the arrangement under which the cultivated area was declared assessable at an all-round maximum rate of Rs. 16 a droon in place of the old rate, which, after allowing for khanabaree and other deductions, gave a maximum net assessment on the droon of Rs. 15-5-19-3 sicca rupees.

19. The custom of the jotedars is to obtain a mukurrari lease for their homestead land. It is necessary to raise the homestead above flood level, and to expend some labour on it, and this the jotedars will not undertake without some security. A perpetual lease for such land is freely given. If the jotedar flits to another village, as he frequently does, the landlord is no worse off, and is not worried by claims for compensation and improvement. When homestead is taken on lease with land adjoining, no distinction of rates is made in the lease; but when *bastoo* is held separately in perpetuity, it is usual to demand a higher rate of rent.

20. The tenure of *bastoo* lands in this district gives rise to no misunderstanding. If, as is generally the case, bastoo is included with other agricultural lands, there can be no difficulty; the rent for all the land together is agricultural rent. If homestead lands are held separately, they are separately liable for rent according to the terms of the lease.

PART II.

Remarks on some of the more important provisions of the Bill in regard to their general application.

Restrictions on sale and sub-letting. The convertible tenure-holder.

21. I have already alluded to the provisions in the Bill regarding the "convertible tenure-holder," and said that they appear to me too intricate to work successfully in practice. They afford every outlet for misunderstanding and litigation. The Select Committee admit that the complicated conditions connected by the conversion of a ryot would be intolerable even for a civil court to deal with. They are therefore to be defined by registration. But this question of registration is also one of enormous difficulty, and I cannot conceive of any process by which a ryot, who has sub-let half his holding, can be compelled to register. I understand that if he does not register he will still remain a ryot and not be a tenure-holder, and that it is this act of registration which will affect his status like a magic wand. How this is to be done, I cannot say; but I am quiet sure that, whether registered or unregistered, the convertible holder will be as hard to define in his real capacity as Proteus in the fable.

22. The proposal to create this indefinable combination was put forward in order to achieve the impossible task of checking sub-letting; but it is better to recognize at once that the ta-k is impossible. In any case, I venture to think that the remedy proposed is worse than the disease it would profess to cure

23. The proposal is also, in my opinion, based on a wrong appreciation of facts. The principal object of the Bengal Government was to discourage the purchase of occupancy holdings by money-lenders or speculators: its avowed intention was to depreciate the value of an occupancy holding in the eyes of these men, and thus deter them from seeking such

an investment for their money. It seems to have escaped notice that it is not by purchase (except in the case of a sale by the civil court) that a money-lender acquires the ryot's rights. He lends money or makes advances of grain on the security of the holding, and it is thus gradually and insensibly, and not by an out-and-out purchase, that he gets possession. The ryot must borrow : he depends on advances : he has no other security than his holding to offer, and if he cannot repay his debt, his holding, in a certain number of cases at least, must pass into the hands of the mahajan. And what will be the effect of depreciating the value of the holding in the eyes of the mahajan? Simply this, that the value of the security being diminished, higher interest will be demanded. The proposal of Government involves the old fallacy by which the usury laws were defended before the time of Bentham. There will be no real gain, *plectentur achivi*, whether the proposal of the Bengal Government passed into law or not.

24. After all, I question whether the evil it is proposed to remedy is so very great. What, I ask, is meant by a mahajan? Is it not the case that in many, if not most, cases the mahajan is also a person directly interested in agriculture? In the prosperous districts of Eastern Bengal, the money-lender is fortunately a rare individual : in Central Bengal and Behar, where he is more common and the peasantry are more indebted, the agricultural population may be divided into two classes—those who borrow money, and those who lend. As soon as a ryot gets free from debt, and his head is above water, does he not immediately set up as a money-lender on his own account? And who is more likely than such a man to buy occupancy rights in his own village as they may fall in for sale? No other ryot indeed would have money for the purchase. But is such a purchaser to be called a ryot or a money-lender? How is he to be shown in the statistics? What value is to be attached to the figures furnished by Government, which showed that during the year 1881-82 5,351 occupancy holdings were purchased by mahajans and 21,203 by ryots? How is it that in the two adjoining districts of Nuddea and Jessore the mahajan purchasers are put down at 170 and 121 respectively, and the ryot purchasers at 198 and 808? I answer that the figures are worthless for any comparison of this kind, and that it is a mere accident whether a purchaser is shown in the returns as a mahajan or as a ryot.

25. I therefore recommend the excision of sections 27 and 38 of the Bill. They will create confusion : they will fail to effect the object for which they were intended, and they are unnecessary.

Enhancement of rent. Grounds of enhancement. The prevailing rate.

26. The question of enhancement is another point on which I desire to make a few remarks: and, first, in regard to the grounds of enhancement, I do not find that the principle which allows rent to be enhanced because the "rate of rent paid by the ryot is below the prevailing rate payable by occupancy ryots for land of a similar description, and with similar advantages in the vicinity," has been adequately discussed. It appears to me, however, that this ground of enhancement probably leads to more injustice and oppression than any other.

27. I have a horror of proposals to level up rates of rent until they assimilate to rents payable for similar lands adjacent. Whenever I find variations of rates of rent in adjoining localities, and even in adjoining holdings, I assume that there is some reason for the difference; and therefore I am glad to see the provision of the present Bill (section 39), which enacts that the rent for the time being payable by an occupancy ryot shall be presumed to be fair and equitable until the contrary is proved. But I do not think that this provision will afford sufficient protection if the prevailing rate in the vicinity is to be taken as the standard up to which rates may be enhanced. Putting all risk of fraud on one side (although I see that Government does not fail to draw attention to the opportunity afforded of furnishing fictitious or collusive rates), I condemn the principle of a prevailing rate on the following grounds:—

28. The system of zemindari accounts in this country is such that, while one set of rates is "payable," another rate is actually paid. The full rate which is entered in the zemindari books may be paid in occasional years, but, as a rule, a zemindar is willing to receive and be satisfied with a rental considerably below the maximum rate. The difference is debited to a *hajat* account, or it is merely shewn as a balance against the ryot, or in some cases it is kept alive by instalment bonds executed by the ryot. But it is well understood by both parties that it is an unreasonable balance, and it is only in those rare cases in which the relation between landlord and tenant are unsatisfactory that any claim based on this unrealised demand is brought into court. The Revenue authorities have a very good knowledge of this fact from their experience of Wards' Estates. Almost every estate is taken charge of with large unrealisable balances, and it is found that even the current demand is not realisable in spite of all the exertions of the managing establishment. Year after year the percentage of collections from Wards' Estates is less than the current demand. This result is always censured as unsatisfactory, but no other result can be obtained without oppressing and harassing the tenantry. It is no exaggeration to say that a fair and liberal zemindar—and I am thankful to say there are many such—does not collect more than 75 per cent. of his nominal rent-roll on an average of years. I have before me a settlement report from Tipperah, in which the Deputy Collector declares that the average cannot be more than 60 per cent. But the zemindar keeps the prevailing rate on his books in order that he may be able to realise it in times of plenty.

29. Although the prevailing rate in this case may be said to be fictitious, it is not so in reality. It is still legally realizable and is realized when possible. The rent-roll shown in

the case returns is based on this rate. In all appreciations of the value of the property, whether for mortgage or sale, this rate is taken as the basis. The ryot also knows and admits his liability. I cannot too often repeat that misunderstanding between landlord and tenant in these provinces is the exception and not the rule. There is no agrarian crisis imminent: there is no such thing as land league organization forcing itself on our notice. The ryot pays the full and established rate without objection when he can afford to do so. There is an elasticity in all these arrangements eminently congenial to the mind of both landlord and tenant. But this is why the standard of a prevailing rate is an especially unfair one for Government to adopt in assessing its own estates. The Government demand is unbending: the method of accounts kept by Government is incapable of elasticity, and the full amount is realised by the most rigorous procedure This is the principal cause of the failure of settlements in which enhancement is based on this ground, and it is the principal cause also of the unpopularity* of the Government management in Government and Wards' Estates But if it is objectionable to allow the standard of a prevailing rate to remain as a measure of enhancement for Government, it is not less so in the case of private individuals; for it will always be open to a harsh and grasping landlord, while obtaining a decree for the prevailing rates, to realise these rates to the uttermost farthing. We may thus find two estates side by side in which the same rates prevail, but in the one the tenantry may be prosperous and contented, and paying their rent to their landlord by mutual agreement, and in the other discontented, bound together to resist all payment of rent whatsoever, and in consequence harassed by perpetual suits in the civil court.

* Notwithstanding the many and valuable immunities which the Government ryots enjoy in other respects.

30. Mr. Reynolds, I see, is also of opinion that the retention of the prevailing rate as a ground of enhancement is fraught with serious danger and ought to be eliminated. His reasons are different from mine, and I do not discuss them; but I entirely agree with his conclusion.

31. Coming now to the provision of the Bill which allows enhancement on the ground that there has been a rise in the average prices of staple food-crops in the locality, or at the usual markets, I admit that this is a fair ground for enhancement But it is a ground likely to be abused, and I cannot agree with the Select Committee in thinking that the ryot is sufficiently protected by "the other restrictions on enhancement, and especially by section 48, which provides that the court shall not in any case decree an enhancement which appears under the circumstances of the case to be unfair or inequitable" This is too important a matter to leave to the discretion of the court.

The ground of rise in prices. Price-lists of staple crops.

32 The principle of the Bill appears to be that the standard of rent, as expressed in grain, shall not vary, and that the landlord shall be protected from the loss arising from the diminished purchasing power of silver in relation to grain. For instance, if the rate of rent 30 years ago was one rupee per acre, and the purchasing power of a rupee at that time represented two maunds of paddy, it is held that the landlord should be entitled to receive as much money rent now as will purchase the same amount, *i.e.*, two maunds of paddy. Quinquennial periods are to be taken for stating the average of prices in each case. It is proposed that authoritative price-lists of staple food-crops should be prepared by the Local Government, and that, in deciding an enhancement suit on the ground of an increase in prices, the court should have regard to these lists as indicating a general rise or fall in prices in any local area without any reference to the particular crop grown on the land the rent of which is in dispute. When a general rise has thus been ascertained, it will rest with the tenant to prove any particular causes which may have prevented him from enjoying the full benefit of the rise.

33. The Select Committee restrict standard staples to food-crops on the ground that other staples are grown for export, and are subject to such great fluctuations in prices as to afford no reasonably stable standard of comparison. But this objection applies with as much force to rice and wheat as to any other staple. There is no reason why in the eastern districts jute should not be declared a staple as well as rice. There is no doubt that, as the Government of Bengal surmise, jute and rice are often interchangeable crop, being sown in the same sort of soil. When rice stocks are large, more land is sown with jute; when rice stock are short, the cultivation of jute is contracted in favour of rice. When rice is cheap, jute is dear, and *vice versâ*. The agricultural records of the years 1882 and 1883 prove this.

34. It seems to me that there is no objection to the determination of rents in accordance with the prices of staples only, and without reference to minor crops. If other crops give higher profits, it will be found, if accurately analysed, that those higher profits are either of a temporary nature, or interest on outlay or wages of extra labour.

35. In regard to price-lists, the Government of Bengal point out that lists showing the prices prevailing at the district head-quarters alone, or the averages of local prices, do not furnish the information as to prices prevailing at harvest time which the Bill contemplates. The price-lists for local markets are required, and it is asked whether such price-lists can be furnished for the last 15 years. In reply to this, I should be disposed to say that from no district in Bengal could a correct list of prices prevailing at local markets at harvest time be furnished. For the districts of this division, I have received reports stating that such lists cannot be supplied. The oldest accounts of the grain-dealers extend over a period of three years only. There is no occasion to preserve accounts, as business is not transacted on credit. The grain merchants, moreover, have no dealings with the ryots, but procure their supplies from itinerant dealers or beparis, whose homes are their boats or some temporary

sheds occupied only during the season, and who purchase from the ryots under a system of advances. If the merchants' accounts therefore could be procured, they would not show the value of the crop to the cultivators; and I presume also that even statistics of purchases from ryots under advances, could they be got, would not give results of a satisfactory character.

36. It seems to me, however, that the precise requirements of section 52 of the Bill go considerably beyond what is necessary, and that the principle of the Bill in regard to enhancement on the ground of increase in prices can be complied with, without attempting to accumulate impossible information regarding prices in local markets, or the prices obtained by the cultivator in his village. From the time of the Orissa famine, at all events,* district price-lists have been recorded and regularly submitted to Government. These go back for more than seventeen years and form a very valuable record of the fluctuation of prices during that period. From the time of Sir George Campbell, now more than 12 years ago, sub-divisional price-lists have also been furnished. If these give, as I maintain they do, a sound, stable standard of comparison, they give all that is really wanted. It is unnecessary to fix with minute accuracy the comparative prices in particular localities or seasons, or to ascertain the exact value paid to a cultivator for a maund of his paddy. All that is required is a general average price-list for a convenient area of country, such as is covered by a sub-division for instance, and having fixed this to institute it as a standard of comparison for all time for all cases within that area. The Government of India appears to entertain a doubt whether the fluctuation of prices recorded at the head-quarters of a district or a sub-division is a true index to the fluctuations which attend prices obtained by the cultivator in his village. There is, however, no reason for doubt. The prices themselves are of course not the same, but it may be accepted as indisputable that the same ratio of proportion always prevails between them. Any minute difference which might be detected on particular enquiry to exist in this ratio is a matter of far too small consequence to enter into the consideration of any court which might be called on to decide a question of enhancement of rent on a comparison of prices at different periods. For this purpose the Government price-lists are sufficient. A general average of the prices prevailing at all seasons of the year in the sub-division is as useful for purposes of comparison with another general average of the same area prepared in the same way for any subsequent year, as the most elaborate and carefully prepared statistics of market prices at harvest time only.

* In the volume of "Prices of food-grains throughout India," published by the Financial Department of the Government of India in 1878, price-lists are given for the head-quarters of the principal districts for every week or fortnight from January 1866, and average monthly prices are given for every district of Bengal from 1866 in the volume of "Prices of food-grains, fire-wood and salt in Bengal" which was published by the Statistical Department of the Government of Bengal in 1879.

37. The detailed provisions of section 52 of the Bill are therefore, in my opinion, unnecessary, and should be modified accordingly.

38. The framers of the Bill appear to assume that the ryot's rent should be liable to enhancement in exact proportion to the rise in prices. The Government of India and the Government of Bengal both suggest that some allowance should be made for the increased cost of production which usually attends a rise in prices. I would go farther than this and consider that an allowance should be made not only for the increased cost of production, but also for the increased cost of living itself. It is not only the prices of produce which have increased. The increased cost of production which, in other words, means the increased cost of cattle, of fodder for cattle, and of wages, is the resultant of the increased cost of living which the ryot as well as his landlord experiences in every direction. In some measure this is due to the depreciation in the value of silver, and it is necessary in any legislation for the protection of the landlord from loss on this account to protect also the interest of the tenant. It is impossible to say to what extent the rise of prices in things generally affects the ryot's profits; but it is certain that it does affect them largely, and it would therefore be unjust not to allow the ryots some deduction on this account in calculating their liability to enhancement of rent in consequence of the rise in prices of staple produce. The ryots are entitled to a distinct set-off on this account; and an arbitrary rule on a point of this nature is absolutely necessary for the guidance of the courts. You cannot leave it to the caprice of individuals to decide on what is "fair and equitable" in a matter of this kind. The rate of proportion which should be allowed is certainly open to discussion. For my part I would suggest that in place of allowing enhanced rent to be claimed in the same proportion as the prices of staple produce are shown to have increased, a rule should be laid down that the enhancement of rent should in no case exceed two-thirds of such proportionate increase. But although I make a suggestion of two-thirds, I am not at all sure that it would not be fairer to reduce the maximum proportion to one-half only. At all events, the two-thirds proposal allows a large margin to the landlord, and yet does not ignore the ryots' claims. If the principle of this proposal is accepted, clause (*c*), section 45 of the present Bill would be modified as follows:—

"(*c*) Subject as aforesaid, and subject also to section 48, the enhanced rent shall not exceed the previous rent by more than two-thirds of the proportion by which the average prices during the last quinquennial period exceed the average prices during the previous quinquennial period taken for purposes of comparison."

39. I entirely agree with the Government of India and the Select Committee that the gross produce test of enhancement has been rightly abandoned. I agree also that, failing this test, the most feasible check on rack-renting is to limit the percentage of increase obtainable at any one time on existing rents,

Checks on rack-renting.

when rent is enhanced either by private agreement or by suit. But the varying limits proposed under this head in the Bill seem to me open to objection. The Bill allows a higher enhancement by a decree in court, than by agreement under a registered contract out of court. I would make both limits the same: there is no doubt that a law which allows a higher increase to be obtained by going into court directly encourages litigation. I see no reason, however, why more than 25 per cent. should be allowed in any case: and when the rent has once been enhanced, I think it ought not to be again raised during a term of 15 years, except on the ground of a landlord's improvement, or of an alteration in the area of the holding.

40. I consider also that all classes of agricultural holdings should be assimilated, so as to provide one and the same period of immunity of enhancement of rent, and that the maximum extent of such enhancements should be established on an uniform basis. For tenures as well as ryots' holdings there should be one law alike. For both I would allow 25 per cent. only as a maximum enhancement, and for both I would fix the term of assessment for at least 15 years. It is desirable to simplify the Bill as much as possible in this and other respects.

The registration of tenures.

41. I come now to the question of registration of tenures and to the provisions of the Bill for the sale of patni tenures and of other tenures which it is proposed to make saleable by the patni procedure. I have already remarked that the difficulties in the way of compulsory registration of tenures are enormous, and I do not think that they have been fully considered by Government. The proposal is to follow with due modifications the procedure of Act VII (B.C.) of 1876, which the Government observe* has worked so successfully in regard to proprietary titles." But with all deference, I can by no means agree that the operations under Act VII (B.C.) of 1876 have been altogether successful. Initial registration has been effected. Initial registration will, however, be but a worthless labour and expense if the subsequent devolutions and transfers of property are not registered as they occur. It is admitted that the present law is insufficient to secure this, and additional legislation is contemplated. But it is a question whether any legislation will be effective which will not be open to even greater objections than those which it is the object of legislation to meet. It has been proposed† to enact "a section providing that no landlord shall be capable of suing for arrears of rent in court, or of instituting any other suit under the rent law, unless his own name (if he be the proprietor), or the name of the proprietor from whom he holds the land (if he be the lessee), be registered under the Act." It is obvious, however, that this provision would be inefficacious in a district like Chittagong, where the proprietors are themselves usually cultivators of their own land. And the proposal is open to this palpable objection, that it would preclude a tenure-holder from suing for arrears of rent from his under-tenant if the name of his superior landlord was not recorded in the Collector's Register. The imposition of a vicarious penalty of this kind is indefensible by any argument. It has been proposed by one of the Collectors of my division that the penalty to be inflicted on a zemindar for non-registration should be the confiscation of his estate. I mention this only as illustrating the difficulties of the case and the impossibility of finding a suitable remedy. In the present existing form of our revenue administration in Bengal, I can suggest no means of ensuring the efficient registration of the changes of proprietorship in estates. It may be that at some future day there will be a patwari cess in Bengal, and an elaborate organization of paid Government patwaries in every village throughout these provinces, and that by this means the registration of estates, and even of tenures, may be successfully accomplished. But that day is probably remote, and in the meantime no local agency is available, such as exists elsewhere, for giving information to the Collector.

* Paragraph 14 of Government letter No. 972T—R, dated 27th September 1883.

† Government order No. 151T—R, dated 30th April 1884.

42. It is hardly necessary for me to point out that, if such insuperable difficulties exist in giving effect to the registration of transfers in regard to estates, the difficulties are likely to be immeasureably greater when we attempt to enforce registration among the innumerable tenures situated within estates. Statistics on this subject are sadly needed, and, as usual, they are almost impossible to procure. The only approximate information as to the number of tenures in Bengal, of which I am aware, is that which was submitted as an annexure to the Board's last Cess Report,* and this only attempts to give the number of tenures assessed with cess. The total number given is 1,161,764† against 251,336 estates. But this number is enormously under the mark, as will be evident when I point out that the number of tenures in Chittagong is given as only 69,449, while in Backergunge the number is 261,893 and in Noakhally 103,890. In Jessore the number given is only 13,198, although the number of permanent leases which have been granted in that district during the previous 15 years is 273,892. The total number of perpetual leases registered in the office of the Registration Department during the past 15 years is 1,221,417: the total number of leases for one year and upwards during the same period is 1,416,819. The grand total is therefore 2,638,236. I

* Board to Government, No. 211A, dated 8th March 1884.

† The number of tenure-holders given by Mr. Justice Cunningham in his minute, which was quoted by Mr. Ilbert in Council on the 2nd March 1883, is only 750,000. I do know where these figures were obtained from, probably from some old cess returns; but they are very inaccurate. The statistics of ryots quoted from Mr. Justice Cunningham's minute are also inaccurate. In the first place the figures represent ryots' holdings, not ryots as stated, and in the second place they exclude the figures from all estates (a very large proportion in some districts) which were valued summarily for cess purposes. I point this out, as the figures were referred to as authoritative, which they certainly are not.

cannot say whether it would be reasonable to assume that this number of tenures, or anything approaching to this number, is still in existence. The figures stand, however, and probably afford a basis of deduction at least as sound as that at present furnished by the Road Cess Office. I am justified, at any rate, in calling attention to them, as giving some indication of the immense number of tenures with which any system of registration will have to deal; and it must be remembered that the number of tenure-holders will greatly exceed the number of tenures assessed with cess. A system of registration deals not with tenures only, but with all the shares and interests comprised in every tenure.

43. I have no doubt therefore that any procedure based on Act VII (B.C.) of 1876 for the registration of tenures will prove entirely inadequate for the purpose. I do not believe that it would succeed even in effecting initial registration. It would certainly fail in effecting subsequent registrations of sucession and transfer. The expense and labour involved, and the harassment such a procedure occasions to all concerned, would in any case outweigh the value of any registration when completed. For the registration of occupancy holdings, I see* that the "creation of a competent village agency" is contemplated, and "a survey and record of rights which will relieve zemindars of the duty of registration and transfer it to responsible public officers." The elaborate organization which this vista of the future holds out to us is at least as necessary for the efficient registration of tenures as it is of the occupancy holdings of ryots.

* Paragraph 14 of Government of Bengal letter No. 972T—R, dated 27th September 1883.

44. I reject therefore the registration of tenures as being at present an impracticable scheme. I have already condemned the proposal of the "convertible tenure-holder" which is founded on such registration. The other proposal of the Bill, which is also founded on such registration, is that contained in section 209, which extends the provisions of the patni sale procedure to registered tenures. This will of course be inoperative if registration cannot be effected.

Extension of the patni procedure.

45. But this proposal goes a great deal further than I think it is desirable to go in the extension of the patni procedure. It was proposed in Sir Ashley Eden's Bill to limit the summary sale procedure to patnis, to tenures at the creation of which the right to sell was reserved, and to permanent tenures with a rental of Rs. 50 per annum. The principle of this appears to me to be sound, only I would allow all permanent tenures and ryoti holdings held at a fixed rent to be saleable. The limitation of fifty rupees rental is unnecessary. It would be a great and reasonable boon to extend to landlords the privilege of bringing to summary sale for arrears of rent all tenures and holdings which were acknowledged by the landlord to be permanent and held at a fixed rent The number of these may be assumed to be a million at the least: for, apart from those recently created by leases, there exist all those which have been held at fixed rates from the time of the Permanent Settlement and those which rest on the 20 years' statutory presumption. To allow all these to be saleable is to extend a clear principle. The amount of revenue payable by the zemindar to Government is fixed, and his zemindari is liable to sale for the recovery of arrears: it is fair and equitable that a corresponding privilege should be accorded to the zemindar to bring to sale for arrears all his tenures and holdings which are permanent and fixed. But I do not admit his claim to more than this, nor do I see any reason why a tenure, merely because it is registered, should be liable to summary sale.

46. If this proposal is carried into effect, it would tend to encourage the grant of permanent leases and to the increase in the number of holdings with fixity of tenure and rent. There might be a prospect of the peasantry of other districts attaining the prosperity of Jessore, where the number of perpetual leases granted in fifteen years has been 273,892; of Chittagong, where it has been 230,795; and of Backergunge, where it has been 192,514. It would also lead—and this is no small consideration, for it is a want now urgently felt in all districts—to the greater punctuality in the payment of rent on the part of under-tenants.

47. It would, however, involve minor modifications in the present patni sale procedure. It will be impossible for the Collector himself to be auctioneer in all these cases. This duty the Collector ought to be able to delegate to any Deputy Collector or Sub-Divisional Officer subordinate to him. Under the present procedure, it is provided (as in clause 3, section 195 of the Bill) that the notice of sale must be stuck up at the sudder cutcherry of the proprietor, and a copy sent to be similarly published at the mofussil cutcherry of the proprietor, or at the principal town or village on the land of the defaulter's tenure. This provision would be quite inapplicable to the altered state of things, under which it is evident that there would be many saleable tenures and holdings without any town or village upon them. Nothing short of personal service should be allowed; this might be done either through a peon, or, if more convenient, by registered letter.* Indeed, I think that in any case the law would do well to provide for personal service on the defaulter.

Regarding the procedure for the service of notices (which might well be made general), see section 96 of the Bengal Cess Act IX of 1880.

48. I will conclude this memorandum with a few remarks on the arrangements contemplated by the Bill for the record of rights and the settlement of rents. The provisions of the Bill appear to be carefully considered and sufficient for the purpose, and it does not occur to me to offer any suggestions to make them more complete. They might, it seems to me, be enforced with very

Record of rights and settlement of rents.

great advantage both in the settlement of Government and Wards' estates, and in all cases in which an application is made to enforce them by either landlord or tenant. I think also that they may be applied with excellent effect to all cases "where the preparation of such a record of rights is calculated to settle or avert a serious dispute existing, or likely to arise, between the tenants and the landlords severally." But I am constrained to say that I look with anxiety on the provision of the Bill which allows the Local Government to enforce them "in any case with the previous sanction of the Governor-General in Council." The Lieutenant-Governor, I am aware, attaches the highest importance to this provision, because it affords an opportunity "to carry out what has often been contemplated, but never attempted, viz. to record, by authoritative enquiry, the rights in their holdings of the entire agricultural community in Bengal" I write therefore with deference, but I retain my own opinion that this proposal to introduce a survey and record of rights over the whole of Bengal is by no means the panacea which some seem to consider it. I do not so much dwell on the difficulties of the measure. This point has been alluded to by the Secretary of State, when he observes* in addressing the Government of India:—"I cannot avoid the apprehension that the difficulties of carrying out these measures in those parts of Bengal, in which village accounts and accountants, if they ever existed, have long ago disappeared, even from tradition and remembrance, may prove greater than you anticipated." But I object to the proposal on the very grounds on which it is generally supported. It is well, no doubt, that "an independent agricultural record should exist with which neither zemindar nor zemindari *amla* could tamper." Such a record is very desirable on many grounds, but I see no reason for supposing that it will bring with it a general agricultural settlement, or any material increase of rural prosperity. Such a result has not ensued in those provinces in India in which a survey and record of rights has been accomplished. It is not fair to compare the North-West Provinces with Bengal, as other causes have led to the accumulation of wealth in our more favoured province; but I certainly do not find any evidence to show that the recordal of rights has led to the enrichment of the peasantry of Upper India. And I am sure of this, that in Bengal where, owing partly to the accident of the Permanent Settlement, it has hitherto been the policy of Government to interfere as little as possible with the people, the attempt to make a survey and record of rights will give rise to great local opposition, and to excessive litigation, by which many persons who are now well off will be impoverished. A survey and record of rights is necessary where disputes exist, where oppression prevails, and where the peasantry are poor and need protection. For this reason the provisions of the Bill in this respect are likely to prove beneficial if they are judiciously enforced. But over most parts of Bengal it cannot be alleged that there are disputes, oppression, or poverty. To introduce a settlement of rents and record of rights in Bengal generally will merely excite disputes and kindle litigation. The normal relation of landlord and tenant in these provinces is one of compromise; it is true that rights are unadjusted, the balance of rent is undetermined, the current demand of rent is not fixed, the area of cultivation is often unknown; it is for the convenience of both parties that the claims of either are not put to the test; and yet it is not the case that the ordinary relations between landlord and tenant are unfriendly. The narrow induction drawn by local officials from occasional disturbances which come to their notice misleads them, and has misled Government into the delusions that general disaffection exists. The one or two cases of disturbance come prominently to notice: the thousands and thousands of instances in which order and contentment prevail pass by unobserved. But the existing state of things which is satisfactory, because it is in accordance with the custom of the country and not objected to by any, will certainly not continue after the appearance of the "Revenue officer" in the district. All that was elastic and unsettled will, under the new procedure, be stereotyped and fixed, and both parties will struggle with one another to the utmost in the civil courts in order that disputes may be decided which would never have arisen if the Surveyor's rod and Settlement Officer's registers had not galvanised them into life It is difficult to over-estimate the bitterness of feeling which a survey and record of rights will thus provoke. The evil I think will outweigh any administrative advantages derived from it. I venture also to think that most persons who are competent from their experience and knowledge of these provinces to form an opinion on the subject, will be found to agree with me in this deliberate conclusion that a survey and record of rights, if it is calculated to settle disputes where they already exist, is equally calculated. where they do not, to call them into existence.

Section 117 (3) of the Bill.

Paragraph 23 of Government order No. 3T—R, dated 24th May 1884

* Paragraph 19 of despatch No. 54, dated 17th August 1882.

Paragraph 103 of Government of India's despatch No 6, dated 21st March 1882.

H. J. S. Cotton,

Officiating Commissioner.

Chittagong,

The 10*th July* 1884.

C. E. G.—Reg. No. 1180C—300—23-7-84.

No. 377G, dated Dacca, the 6th August 1884.

From—N. S. ALEXANDER, Esq., Offg. Commissioner of the Dacca Division,
To—The Secretary to the Government of Bengal, Revenue Department.

IN accordance with the instructions given in Government circular No. 3T—R, dated the 24th May last, I called a conference of the Collectors of this division, which was held on 28th and 29th July. There were present—

Mr. Glazier of Mymensingh,
„ Wyer of Dacca, and
„ Dutt of Backergunge.

Mr. Sharp of Furreedpore did not attend.

CHAPTER I.

2. There does not appear to be any important matter calling for notice in this chapter.

CHAPTER II.

3. It appears clear that the definition of ryot in section 5 (3) does not cover those holding under unregistered lakhirajdars and similar classes of ryots. Similarly in 5 (1) tenureholders under unregistered lakhirajdars are not provided for.

4. Instead of section 5, 4 (*b*), and section 37, we would suggest that the following be substituted :—

"If the occupancy ryot should sublet any of his holding, the sublessee shall acquire a right of occupancy against the sublessor, his successors in the land so sublet to him, and the superior landlord, in the event of his exercising his right of pre-emption or otherwise becoming possessor of the occupancy ryot's holding." It is expected that such or a similar proviso of the law would act as a deterrent to subletting on an extensive scale, and would also be likely to prevent speculators from purchasing holdings as a speculation with the purpose in fact of raising the rents of the actual cultivators to the highest maximum. The enactment of section 37 as it now stands in the Bill would not then be required. We are of opinion that the provisions of that section (37) are unworkable and would be practically inoperative. It would be extremely difficult in the first place to ascertain what holdings had come within the purview of that section, and it would be extremely difficult to enforce registration without the expenditure of much money and labour. The protection of the actual cultivator, or practically the underryot, seems to be by far the most important point to be secured. That this class specially needs protection no party denies. In paragraph 4 of the Government of Bengal's letter it is stated, "from the earliest discussions of the question it has been accepted that if by any definition or legal provision the limitation of the occupancy right to actual cultivators could be secured," most, if not all, of the objections to the proposal" (*i.e.* of free sale) "would be removed. It is for this reason that the plan set forth in section 37 has been devised, mainly with a view to be a check on money-lenders; but it is not against money-lenders only or even chiefly that the actual cultivator needs protection. The jotedar or occupancy holder in the natural course of things sublets his land and gets ryots under him; and it is an acknowledged fact that small landlords are harder on their ryots than the larger landholders, and any system which aims at rendering more secure the position of the class of ryots who grow up into small landlords, while the lower tenantry are left at the mercy of the law of supply and demand, must tend in the nature of things to foster a class of serfs of the soil.

For section 5 (5) as at present we would suggest the following :—"When the area of a holding exceeds 100 bighas, and the whole or part of it is sublet, the tenant shall be a tenureholder."

CHAPTER III.

5. In section 8 we would suggest that the enhanced rent to be fixed should not exceed 25 per cent. of the rent formerly payable.

6. *Section* 10.—The period should be 15 years instead of 10.

7. Under this chapter we would propose to make the following alterations as regards sections 15, 18, 19, 21, and 22 :—That the registration to be effected should not be through the landlord, but through a public office, such as that of a rural or special sub-registrar, notice of the registration being served on the landlord at the expense of the party registering.

8. In a case which occurred lately in the district of Mymensingh there was an enhancement of the rent of the tenureholder from Rs. 1,326 to Rs. 5,062, merely on the ground that this sum was the aggregate amount paid by the ryots minus 10 per cent. collection charges and 10 per cent. profit. There have on the whole, however, been very few cases of enhancement of rent of tenures in this division of late years.

CHAPTER IV.

8 (*a*). We are unanimously of opinion that the present provisions of the law should be maintained. There have comparatively speaking been very few enhancement suits in this division. It is not, however, believed that the landlords in this part of the country have experienced any practical difficulty in rebutting the presumption if unjustly pleaded.

CHAPTER V.

9. *Paragraph 7 of the Government letter.*—The definition of village or estate should hold good. We are not aware of any other unit that could be substituted. Neither district, pergunnah, sub-division, nor police-station would do. The estate should be of the same extent that it was 30 years ago. During the past 32 years there have been only 518 partitions out of 24,027 estates in this division.

10. There does not appear to be any reason why the law as laid down in section 29(1) should not stand.

11. *Paragraph 8 of Government letter.*—If the provisions recommended by us in paragraph 3 be accepted, there appears to be no reason to fear any harm resulting from the provisions contained in (*b*), (*f*), and (*g*) of section 31. Similarly in section 32 as regards the right of pre-emption by landlords.

11(*a*). Allowing that the provisions as to sublotting, see ante, are agreed to, there should be no restriction as to the transferability of the holdings.

12. *Section 43. Paragraph 9 of the Government letter.*—There does not appear to be any such thing as a prevailing rate—such as would be practically available for deciding on an enhancement. Sections 43(*a*) and 44 might therefore be struck out of the Bill. There might perhaps be found to be an average rate such as is spoken of in section 60(*g*), but it is doubtful whether this could be taken as a basis for enhancement.

13. *Paragraph 10 (2) of the Government letter.*—There *does* appear to us to be a well grounded belief that ryots will not be free agents in making these private contracts. We do not think therefore that enhancements obtained by such private contracts should be allowed to the same extent as the enhancements made by order of a court; in fact that the enhancement should not in any case exceed one-fifth of the gross produce or any lesser proportion to be fixed for any special area by the local Government.

14. *Dissent to chapter V by Mr. Dutt.*—It has been agreed at the conference that when rents payable by occupancy ryots are enhanced by private contract, they shall not in any case exceed one-fifth of the gross produce of the land or any other smaller proportion that may be fixed by the local Government for local areas. I would extend this maximum limit of enhancement in all cases, *i.e.* in cases of enhancement in court as well as out of court.

CHAPTER V.

15. *Paragraphs 10-13 of the Government letter.*—We are unanimously of opinion that the cost of production should be taken into consideration before enhancement be allowed on the ground of a general rise in prices, and that the gross produce at both periods should be taken into consideration in order to determine whether the enhancement be fair and equitable. We do not think there should be any limits to enhancement on the grounds of landlords' improvements, except those provided for in sections 46 and 48 of the Act. With reference to Government letter No. 888T—R of the 22nd ultimo, to the Secretary of the Board of Revenue, we are of opinion that the Court of Wards should be allowed to contract with their tenants as to the payment of increased rent before undertaking improvements. In case of other landlords the same agreement may be allowed if made before the Collector.

16. *Paragraph 11 of the Government letter.*—We think that there should be no difference in the rates of occupancy and non-occupancy ryots as far as regards this division. Those rates are now the same, and section 42 (1) will not lead to special litigation.

17. *Paragraph 12 of the Government letter.*—In all the districts of this division the custom is that when a ryot holds his homestead as a part of his holding, if he is ejected from one he is ejected from the other, but when his homestead it held otherwise than as part of his holding, then as a rule he is allowed to retain possession of his homestead lands on the same conditions as he previously held them.

18. To prevent ryots from being summarily ejected from their homestead, we propose to substitute for section 216 the following :—

"When a ryot holds his homestead otherwise than as a part of his holding as a ryot, the homestead being without the limits of any municipality, he shall acquire the right of occupancy in three years, and in case he be ejected before the expiry of that time, he shall be entitled to fair compensation."

19. *Paragraph 13 of the Government letter.*—As far as regards this division, we see no reason for thinking that section 51 (*a*) will not work, and that it will cover all cases. As the custom of paying in kind does not exist in this part of the country, we do not pass any opinion on section 61 (3).

20. *Paragraph 14 of the Government letter.*—As regards prices, the sub-divisional prices current are not the average of the prices current for local markets, but only the prices at the sub-divisional head-quarters, and the district prices current lists are not the average of the sub-divisional prices current; therefore none of the information as to prices required by the Bill can be furnished. From local enquiries made and from our general knowledge we are of opinion that no correct list of the prices of food grains from the districts of this division for the last 15 years can be constructed. A tolerably correct list for the last five years, and

possibly for the last 10, might be prepared for sub-divisional head-quarters only. The following corrections should be made in the statement of staple crops :—

Mymensingh	Rice	...	80
	Other crops	...	20
Backergunge	Rice	...	90
	Other crops	...	10
Dacca	Rice	...	75
	Other crops	...	25
Furreedpore	Rice	...	75
	Other crops	...	25

21. *Paragraph* 15 *of the Government letter.*—It is a fact that jute and rice are sown on the same soil and are interchangeable crops ; but jute cannot be taken as a standard since its price is so fluctuating that it is impossible to appeal to it as a standard.

CHAPTER VI.

22. *Paragraph* 16 *of the Government letter.*—As we have given our opinion that occupancy and non-occupancy ryots should pay the same rates and enhancements by private contract, and should be limited in both cases to one-fifth the gross produce, we need not discuss this further.

23. With regard to the circumstances of this division the provisions of the Bill are calculated to intensify the difficulties in acquiring the rights of occupancy. The only way to overcome the difficulty is to omit section 58 (*c*).

24. We think that in no case should the rent paid by the actual cultivator exceed by 25 per cent. the rent paid by the occupancy ryot.

CHAPTER VIII.

25. *Paragraph* 18 *of the Government letter.*—In addition to section 86 add that the tenant aforesaid "may bring a complaint before a Magistrate," who, on conviction, may fine the offender Rs. 500, or sentence him in default to six months' simple imprisonment.

CHAPTER IX.

26. *Paragraph* 19 *of the Government letter.*—We have no suggestion except that in clause 90 (2) for "deliver or cause to be delivered to his landlord a request in writing" should be substituted "give notice to his landlord." This change is necessary, because in this division the majority of ryots do not know how to read and write, and in Backergunge the majority of tenureholders are equally ignorant.

27. *Paragraph* 20 *of the Government letter.*—Since we have proposed to allow no difference of rates between occupancy and non-occupancy ryots, section 96 should be left as it stands, as we do not think that its provisions will be calculated to promote the exercise of arbitrary power on the part of the landlords.

28. *Paragraph* 21 *of the Government letter.*—It will be quite sufficient to allow the measurement of the external boundaries of lakhirajes, At present there is no officially determined local pole If one is determined the measurement should be made according to the local standard, and then the result converted into standard bighas.

29. *Paragraph* 22 *of the Government letter.*—We approve of the provisions as to the appointment of managers, provided that when the application is made 102 (*b*) by a co-owner or co-owners the applicant or applicants must possess at least an 8 annas share of the estate.

CHAPTER X.

30. *Paragraph* 23 *of the Government letter.*—After section 110, clause (2) (*b*), the following clause should be added :—

"Provided that the Collector shall be empowered to attach and manage the estate for such time as may be necessary to settle the dispute."

Such a provision is likely to obviate criminal cases and will also facilitate the proceedings of the revenue officer employed under this chapter.

31. *Section* 116, *clause* (2).—After the word "shall" should be entered "except in the case of those who have appeared and taken a part in the procedings," (*e.g.* as under section 14) ; the rest of the provisions of chapter X have our entire approval.

CHAPTERS XI AND XII.

32. *Paragraph* 24 *of the Government letter.*—Having regard to the districts of the division the list given in section 138 (1) seems to be complete.

CHAPTER XIII.

33. *Paragraph* 25 *of the Government letter.*—As the present Bill provides only for distraint through courts, we think that the provisions of distraint, as prescribed in the Bill, should be retained. A new section should, however, be added after section 158 to the effect that where it is shewn that the application for distraint was made on false grounds, the applicant shall, on conviction before a Magistrate, be liable to fine, which may extend to

Rs. 500, or to imprisonment of either description, which may extend to six months, or both. Some such provision as this appears needed to prevent false petitions for distraint made with the object of harassing the tenant.

CHAPTERS XIV AND XV.

34. *Paragraph* 26 *of the Government letter.*—We have no remarks to offer under these chapters.

CHAPTER XVI.

35. *Paragraph* 27 *of the Government letter. Section* 198 (1).—Instead of "at any time before the day" should be inserted "at any time at least seven days before the day." Unless some such provision as this is made, it is imposible to dispose of petitions which are often made on the day previous to the sale with the purpose of trying to stay a sale.

CHAPTER XVII.

36 *Paragraph* 29 *of the Government letter.*—We have no remarks to make on the provisions of section 213 concerning chur and doara lands.

37. *Section* 210.—We think there ought to be some provision of law limiting the power of contract for the rate of interest on arrears of rent to 12 per cent. per annum (simple interest).

38. *Paragraph* 30 *of the Government letter.*—Section 227 sufficiently meets the requirements of all the districts in the division.

39. *Paragraph* 31 *of the Government letter.*—The summary sale procedure cannot be applied to these dependent taluks, the revenue of which was settled direct with Government, though the holders pay it through the zemindar. These taluks are not strictly speaking tenures. The talukdars originally had equal rights with the zemindar, and Government has tacitly consented to their agreeing among themselves to pay their revenue through one of their fellow landholders. If the zemindar who formerly paid the revenue objected to do so any longer, the Government would, we are of opinion, be bound to receive the revenue direct.

40. *Paragraph* 32 *of the Government letter.*—The summary sale procedure should not be applied for the recovery of arrears of road cess and public works cess from rent-free tenure-holders for the reasons stated in paragraph 32 of the Bengal Government letter.

41. *Paragraph* 33 *of the Government letter.*—There are no utbandi or halhaslee tenures in this division.

42. *Paragraph* 34 *of the Government letter.*—Haolas of all grades are tenures as much as taluks, and no special exemption from the pre-emption clause will be necessary with regard to haolas.

43. The same remark applies to miras, karsha, and kaem karshas.

44. By a custom which is prevalent in all districts in this division, there are ryots' holdings like the jotes of Dakhin Shahabazpore and Mymensingh which are legally recognized as transferable; and these holdings are legally recognized as saleable We recommend that the holdings which are saleable by custom should certainly be exempted from the pre-emption clauses.

J. E. S.—Reg. No. 5247C—327—12-8-84.

No. 458L.R., dated Barisal, the 18th July 1884.

From—R. C. Dutt, Esq., Officiating Collector of Backergunge,

To—The Commissioner of the Dacca Division.

With reference to the Government circular letter No. 8T.R., dated 24th May last, forwarded by your No. 169G, dated 29th idem, I have the honour to submit the following report on the subject of the revised Rent Bill published in the *Gazette of India* of the 12th April last. I have consulted my subdivisional officers on the provisions of the Bill, and have also received valuable reports on the subject from Mr. Reily, Superintendent of Nawab Ahsanullah's estates in this district, and Baboo Dina Bandhu Sen, Pleader of Barisal. Mr. Reily discusses the Bill with great ability from the zemindar's point of view, and Baboo Dina Bandhu's notes on the working of the present law and the probable result of the provisions of the Bill are suggestive and valuable. I have also had the principal provisions of the Bill discussed at a meeting of some of the leading resident zemindars, pleaders, and revenue officers of this district, and I have derived much valuable assistance from the gentlemen who were present at the meeting. My own experience in this district also, and the enquiries which I specially made on the subject of this Bill during my frequent visits to the interior, have enabled me to collect many facts which I will embody in this report.

N.B.—The marginal notes in this report have been added subsequent to its submission to the Commissioner of Dacca. The Divisional Conference at Dacca to which frequent reference has been made in these notes was held on the 28th and 29th July 1884, and Mr. Alexander, Commissioner of Dacca, Mr. Glazier, Collector of Mymensing, Mr. Wyer, Collector of Dacca, and Mr. Dutt, Collector of Backergunge, were present.

CHAPTER I

Preliminary.

2. I have no remarks to make on this chapter.

CHAPTER II.

Classes of Tenants.

3. *Section* 5—It has been wisely decided not to frame any rigid definition of "tenure-holders" as distinguished from "ryots," but only to indicate some general principles on which courts of law will proceed in deciding, when such questions come before them, whether a person is a tenure-holder or a ryot. The principle, too, that a tenure-holder means primarily a person who collects rent, and a ryot is primarily a person who cultivates land, is a sound and equitable one, and will be found to be in consonance with the interpretation which is ordinarily put to these terms in most districts in Bengal I will, in connection with this section, briefly describe the tenures and ryoti holdings of this district, and examine how the principle involved in the section affects the existing state of things in Backergunge.

4. There are very few districts in Bengal in which there are so many different kinds of tenures as in this district. Most parts of the district were brought under cultivation in a comparatively recent period, and those who undertook the work of reclamation generally secured for themselves a permanent interest in the land which they brought under cultivation. Zemindars were glad to create such tenures, as they thereby succeeded in bringing extensive tracts of waste lands in their zemindaris under cultivation, and the newly created tenure-holders were also gainers by the arrangement, as they secured to themselves a large share of the profits from the land which they reclaimed. Large tracts of land in the south of this district, in Patuakhali, Perozepur, and Bhola subdivisions, have been thus reclaimed within the memory of living men, and the process was in full operation when it received a check by the cyclone of 1876, from which it has not yet completely recovered. It is in this way that the tenure-holders who brought lands under cultivation succeeded in keeping a large portion of the profits from land in their own hands. As cultivation extended, these men began to sub-let and the sub-lessees again induced other cultivators to settle under them, and themselves passed into the status of tenure-holders. For these as well as for various other reasons a number of tenure-holders are often found to intervene between the actual cultivator and the zemindar in Backergunge. The simple fact is that there is a considerable margin of profit between what the zemindars get as the income from their estates and what the actual cultivators can afford to pay after supporting themselves and paying the expenses of cultivation. Theoretically speaking, this margin should have gone to the improvement of the status and circumstances of the actual cultivators of the soil; but practically in Backergunge it has led to the creation of a swarm of tenures intervening between the ryots and zemindars

5. It must not be supposed, however, that the creation of these tenures means necessarily the impoverishment of the people of this district. On the contrary, the tenures are only different names under which the people of Backergunge have succeeded in keeping to themselves a good proportion out of the profits of the land which they have brought under cultivation. When it is considered that there are almost as many tenures as there are families in Backergunge district, that the tenure-holders belong to the people and form a considerable portion of the people, it will be understood that the existence of these tenures means to

some extent the well-being of the people generally. There can be no doubt that the numerous tenures which exist in this district form a bar to excessive enhancement on the part of the zemindar. Much of the profits from the land remains in the village under one name or another, and this is a result which is not observable in districts where none intervenes between the zemindar and the actual cultivators. It is notable also that the number of tenures (hakiyats as they are called in this district) is smaller in the Patuakhali subdivision than in other parts of the district; and it is exactly in this subdivision that the rents levied by zemindars are excessively high and the ryots are badly off. In other parts of the district some zemindars try to smash up the tenures by expensive litigation or by other means, as they fully expect an enhancement to the income from their estates when there are none to intervene between themselves and the actual cultivators. Considering all these facts, I am inclined to think that the existence of the numerous tenures of Backergunge is a kind of protection to the agricultural community of the district against the excessive demands of rich and powerful zemindars.

6. From the completion report of the first road cess valuation of this district, No. 103, dated 23rd June 1887, it appears that there were 278,715 tenures. But this figure does not represent the exact number, as most of the tenures which pay rent under Rs. 100 were valued summarily. It is therefore not unreasonable to assume that only one half the number of tenures come under valuation, and the total number of tenures in this district is about five hundred thousand. There is nothing surprising in this large number of tenures, because every landlord and every tenure-holder has by custom an *unrestricted* power of creating a tenure between himself and his subordinate ryots or tenure-holders. He does not often act in this manner, for the creation of a subordinate tenure always means a loss in his permanent income, the subordinate tenure-holder requiring a margin of profit for himself. Nevertheless whenever the superior landlord or tenure-holder is in want of money or is unable to manage his own property, he always creates a subordinate tenure for a consideration, and the power to do so is unrestricted both by law and custom.

7. The tenures in this district go by the name of *taluk* or *howla* or transferable *karsha*. But there are different grades of taluks and howlas, and the following are the most usual gradations of tenures in this district, viz.:—

(1)	Taluk.	(5)	Osat howla.
(2)	Osat taluk.	(6)	Nim howla.
(3)	Nim osat taluk.	(7)	Osat nim howla.
(4)	Howla.	(8)	Kaem karsha or miras karsha.

I have enumerated only the commonest tenures in the above list, which is not by any means an exhaustive list. A tenure called tin howla is sometimes held under an osat howla, while tenures called miras howla and dar miras howla are sometimes held under other kinds of howla. There are also other tenures which are less common: "kaem karsha" means permanent cultivating right and "miras karsha" means heritable cultivating right; but both these rights are transferable and heritable by custom, and are reckoned as tenures and not as ryoti holdings.

8. According to the custom explained, before any talukdar may for a consideration create an osat taluk or a howla under him, any howladar may create a nim howla or osat howla under him, and the howladar of the last grade can create a miras karsha or kaem karsha under him It is the constant ambition of the actual cultivator to rise to the status of a howladar, and he will pay any *salami* (consideration) to his superior tenure-holder to be made a howladar. Often when a howladar is a weak man and is unable to cope with his ryots, say 30 or 40 in number, he will receive a *salami* from one of them and make him a nim howladar. The new nim howladar will then be entitled to rent from the other 39 ryots, and the howladar will only receive rent from the nim howladar. As I have said before, such an under-tenure is never created unless the superior tenure-holder is under some necessity for doing it, but there is no restriction to his power to do so as long as the margin of profit is capable of further subdivision.

9. Under all these different classes of tenure-holders come the ryots, who are divisible into two classes, viz., karsha ryots and kole karsha ryots, the latter being under-ryots. In the subdivision of Dakhin Shahabazpur the karsha ryots are called jotedars and the kole karsha ryots are called kole jotedars. The karshadars and kole karshadars, jotedars, and kole jotedars all sublet, but this is the exception rather than the rule. As a rule the actual cultivation is done either by the karshadar or by the kole karshadar, and there are no sub-lessees.

10. By a custom which is legally recognized only in Dakhin Shahabazpur the ryots' holdings are transferable. In other parts of the district the sale of ryoti holdings is not legally recognized, but practically the ryot very seldom fails to effect a sale when he wishes it. He receives the money and sells his holding, and the zemindar's gomasta accepts rent from the new purchaser, although he does not enter the new name in his books perhaps until he receives a consideration. Even in khas mehals we have been obliged to recognize such sales, although we do not admit the legal right to do so. I will speak of this universal practice again when I speak of the right of sale of occupancy rights.

11. Such are the different tenures and ryoti holdings in this district, and the application of section 5 of the bill will be attended with no difficulty in this district. Clause (*a*), sub-section (4) of section (5), provides that the court shall determine whether a tenant is a tenure-holder or a ryot by local custom, and local custom at once points to the talukdar, the

howladar, and the kaem karshadar as tenure-holders, and the karshadar and the kole karshadar as ryots. There may be exceptions to this rule, as each case will be decided on its individual merits; but there can be no doubt that the application of this section in this district will as a rule be easy.

12. In sub-section (1) of section (5) I would after the words "or from another tenure-holder" insert the words "or from a lakhirajdar"; and in sub-section (3) of the same section I would insert the words "or immediately under a lakhirajdar" at the end The reason of this is obvious. The definitions of the words "proprietor" and "estate" have been so framed that a lakhirajdar whose name is not entered in the revenue registers is not as "proprietor." Hence the insertions recommended are necessary.

13. I would recommend another important alteration in section (5), and that is the excision of clause (*b*), sub-section (4). That clause taken with section (37) will have the effect of converting ryots who sub-let more than one half of their holdings into tenure-holders. These provisions are intended by Government as a check on sub-letting, but in this district the provisions will operate as a strong incentive to sub-letting. I have already explained in paragraph 8 the keen desire of the ryots of this district to acquire the position of tenure-holders, and they will rapidly sub-let portions of their holdings to others, if they can thereby acquire the status of a tenure-holder. Karshadars holding 20 bighas or 30 bighas will rapidly convert themselves into tenure-holders by sub-letting portions of their holdings. Proprietors and superior tenure-holders, who alone have the power of creating sub-tenures under the present custom and law, and who seldom do so except when in difficulty, will be sufferers under the arrangement, as sub-tenures will spring up under them in hundreds against their consent. And such sub-tenures will be saleable under the present bill, whereas the original ryoti holding could not under this bill be sold to an outsider so long as the proprietor or superior tenure-holder was willing to buy it. For all these reasons it was the strong and unanimous opinion of the meeting that I convened to discuss this bill that clause (*b*), sub section (4), section (5), as well as section (37) of the bill should be omitted, and I entirely agree in this opinion.

The officers present at the divisional conference at Dacca agreed to omit this clause (*b*), sub-section 4 of section 5. And in order to protect the under-ryots, *i.e.*, actual cultivators under sub-letting ryots, they proposed that the former would acquire rights of occupancy as against the latter.

14. There is no separate class of money-lenders in this district. Zemindars and superior tenure-holders lend money to their ryots. There is no ground of apprehension therefore that money-lenders will buy up occupancy tenures in this district.

15. If clause (*b*), sub-section (4), section (5), be omitted, as has been recommended in paragraph 13, then it will be necessary to provide in some other form against ryots subletting in an extensive scale and still continuing to be considered as ryots. The bill as it originally stood provided that tenants holding over a hundred bighas of land should be classed as tenure-holders and not as ryots. The present bill however only provides that such persons will be presumed to be ryots until the contrary is shewn. The object in both cases is to protect the actual cultivator and to bestow on him occupancy rights. If a person holding five or six hundred bighas and sub-letting most part of his holding can claim to be a ryot, then the fifty or sixty men who actually cultivate the land under him will be classed as "under-ryots," and will, therefore, fail to acquire occupancy rights. In other words, the actual cultivators will not be protected.

16. From this point of view I am clearly of opinion that the provision of the previous bill was more efficacious than the provision in the present bill. The present bill only presumes that a tenant holding 500 bighas is a tenure-holder, but the presumption will always be capable of being rebutted, and in this way the object of the law will be evaded. A zemindar wishing to prevent his ryots from acquiring occupancy rights will be able to parcel out the village to two or three of his own creatures, who will be described as ryots in the registered leases granted to them. And the entire population of the village will then be "under-ryots," and therefore incapable of acquiring occupancy rights. Even when a zemindar does not effect this intentionally, circumstances will often throw large tracts of the country into the hands of individual ryots, and entire classes of cultivators holding under them will be unjustly debarred from acquiring occupancy rights. For all these reasons I consider it would be wiser to declare that all tenants holding over 100 bighas of land and sub-letting portions of such land will be reckoned as tenure-holders and admit no exception to this rule. Companies of men who conjointly till large tracts of land under the *gonti* or any other system will still be reckoned as cultivators under this rule; but single individuals who hold more lands than they can possibly cultivate themselves, and who, therefore, lease portions of it to others, will be classed and will deserve to be classed as tenure-holders. For the same reasons ryots holding more than one piece of land aggregating in all to over 100 bighas in the same village or estate should be reckoned as tenure-holders and not as ryots. I may add that these precautions would be unnecessary if clause (*b*), sub-section (3) of section (5), was retained; but for reasons stated in paragraph 13 that clause cannot, I think, be retained.

In the case of Baboo Dhanpat Sing *versus* Baboo Guman Sing, deceased, 5th May 1864, the High Court held that "the amount of land included in the tenure is, we think, sufficient evidence that the tenants are not ryots." Revenue, Judicial, and Police Journal, Vol. II, page 267. In road cess valuations, ryots paying Rs. 100 or above are classed as tenure-holders. Ryots owning 100 bighas certainly pay more than Rs. 100, and the limit now proposed is safer than the one recognized in the road cess operations.

17. I can only conceive of one case in which such a rule as is suggested in the last paragraph will operate unfairly towards any person. There are districts like Backergunge where ryots aspire to become tenure-holders and where they cannot become so without the

sanction of the proprietors or superior tenure-holders. The number of ryots in this district who hold over 100 bighas of land is comparatively very small; but still there are such ryots and they will under the operation of the rule proposed become tenure-holders. Under such circumstances their superior tenure-holders or proprietors ought to get some compensation for the right which is thus created in their property by the operation of the proposed rule. I would therefore have section (5), sub-section (5), run thus :—

The conversion of holdings which in their original inception were mere ryoti holdings into tenures through sub-letting or through other means is in active operation, not only in Backergunge as explained in paragraphs 4 to 8 of this report, but also in many other parts of Bengal. The jotedars, chokandars, and mulundars of Julpigori, for instance, are ryots who have risen to be tenure-holders under the operation of this custom. The land law of Bengal cannot be complete if it fails to recognize or legalize this existing custom, under such checks as may be deemed necessary.

The officers present at the divisional conference at Dacca agreed to modify sub-section 5, section 5, so as to convert all ryots holding over 100 bighas and sub-letting portions of their holdings into tenure-holders.

"Where the area of a holding exceeds 100 standard bighas, or where the aggregate area of more than one holding held by the same ryot in the same estate or village exceeds 100 standard bighas, and the whole or part of such holding or holdings is sub-let, the tenant shall be considered a tenure-holder and not a ryot.

"Provided when a ryot is converted into a tenure-holder under the operation of this section, his superior tenure-holder or proprietor shall be entitled to recover from him such fee as he would have been entitled to by the custom of the country if he had created the tenure or sub-tenure."

CHAPTER III.

TENURE-HOLDERS.

18. *Section* 8.—This chapter deals with tenures. Baboo Dina Bandhu Sen objects to section (8). He says "In this district there are plenty of tenures created when the lands are jungle and *bheel* at a nominal rent. The rents payable for such under-tenures are called *amranijamma*. When the jungle is cleared and *bheel* lands become cultivable, rent is enhanced. Generally 100 or 200 bighas or more of such lands are let at a nominal rent of Rs. 5 or Rs. 10. Under section 8 of the bill the rent can be enhanced to double the previous rent. I believe this provision will go very hard against the zemindars." Section 212 of the bill specially provides for such cases and allows the zemindar to make any terms he chooses with tenants for bringing waste land under cultivation. Babu Dina Bandhu Sen, however, says such contracts are not always given. It certainly seems to me that the court should be allowed to use its discretion in allowing enhancements in such special cases. On the other hand, in the absence of any such special reasons, the limitation fixed by section 45 (*b*) in the case of occupancy rights should apply to tenures also. I would therefore have section 8 run thus:—

"Where the rent of a tenure-holder is liable to enhancement, the enhanced rent fixed under the last foregoing section shall not exceed the previous rent by more than four annas in the rupee.

The officers present at the Dacca Divisional Conference agreed to allow only an enhancement of four annas in the case of tenure-holders.

"Provided that when waste land has been let at a specially low rate for the purpose of reclamation, the limit of enhancement fixed by this section shall not apply, and the court may order such enhancement as it may think proper after taking into consideration the cost of reclamation and all other facts connected with such case."

19. *Section* 10.—I would alter this section and enact that, as in the case of occupancy tenures, rent once enhanced may not be altered for 15 years. Tenure-holders often effect much improvement by raising embankments, &c., in this district, and a security against enhancement for a long term will encourage them in such beneficial acts. Besides it would be anomalous to enhance the rent payable by a tenure-holder of every tenure when such tenure-holder cannot obtain any enhancement from his ryots more than once in every 15 years.

The officers present at the Dacca Divisional Conference agreed to this proposition.

20. *Sections* 15 *to* 22.—The provisions made in sections 16 and 17 for the registration of transfer by sale in execution of decree are simple and workable, but the provisions made in sections 15, 18, 19, 21, and 22 for the registration of voluntary sales are exceedingly complex and impracticable. These provisions are that the vendor and the vendee shall apply to the landlord; that the landlord may grant the request or refuse to register; that in the latter case he shall give a written statement of his reasons to do so; and that failing this he may be fined. Further that the vendor and vendee may in case of refusal apply to a court for orders to register the transfer; that the court will issue notice to the landlord to show reason why he will not register and will pass orders after hearing both sides. Further that the vendor and vendee may ask for copies from the landlord's register on payment of fees, and that landlords shall be liable to fine if they do not keep such registers in the prescribed form. When it is remembered that the "landlord" in this district means very often an illiterate howladar or miras karshadar, or is represented by a gomasta on Rs. 3 the month, and that forgery is one of the commonest crimes in the district and is of frequent occurrence, the utter impracticability of the complicated provisions stated above will be abundantly manifest.

21. I had this matter thoroughly discussed in the meeting which was convened in Barisal for considering the bill, and the meeting agreed with me in thinking that a simpler and more practicable procedure should be laid down for the registration of private sale of

tenures. The simplest possible procedure is this. Parties transferring tenures generally register such deeds, and this may be made compulsory under the provisions of this bill. Sub-Registrars will in such cases take an additional fee of two per cent on the annual rent of the land and also the sum of Rs. 1 per issuing notice on the landlord. These sums he will remit to the Collector with an intimation of the contents of the document. The Collector will send the fee to the landlord and also serve notice on him to shew cause within a month why the sale will not be declared valid. In case there is no objection raised, the sale will be declared valid. In case objection is raised by the landlord, the Collector will refer the matter to the Civil Court, who will then proceed under section 19 of the bill. This procedure will require only an additional register being opened in the Collector's office, and will avoid much litigation, fraud, and forgery. The opening of a register in a prescribed form by each howladar and kaem karshadar will not be then required, and they will not be fined for not doing what it is impossible for them to do.

The officers present at the divisional conference at Dacca agreed to registration being thus made through a public office.

CHAPTER IV.

Ryots holding at fixed rates.

The first Munsif of Barisal alludes to a practice frequent in this district of zemindars and tenure-holders allowing their tenancies to be sold for arrears with a view to levy them again *benami* free of incumbrances. In the absence of this statutory provision, ryots with fixed rents will find it impossible to prove their status against such benamidars suing for enhancement. The withdrawal of the statutory provision therefore would practically result in the loss of the rights of ryots of this class.

The officers present at the Dacca Divisional Conference agreed to retain the presumption.

22. This chapter relates to ryots holding at fixed rates. Mr. Reily, Superintendent of Nawab Ahsanullah's estates in this district, takes the zemindar's view of the 20 years' presumption rule, and objects to its continuance. But I entirely agree in the remarks made in the letter of the Bengal Government on this subject. The rule is one of the most valued provisions in the interests of the ryots and has been in force for a quarter of a century, and there is absolutely no reason for its withdrawal. There are very few enhancement suits in this district, but I am unable to state how far this is owing to the presumption alluded to above.

CHAPTER V.

Occupancy Ryots.

23. *Sections* 24 *to* 27.—This chapter relates to occupancy ryots. It is intended to bestow the occupancy right on all settled cultivators in Bengal, and sections 24 to 27 have been framed to carry out this object. There can be no doubt these sections will completely fulfil the object in view. Nearly all the karsha ryots of this district holding immediately under tenure-holders or proprietors will under the operation of these sections acquire the right of occupancy.

The attempts that are constantly made to prevent the growth of occupancy right, both in Bengal and in Behar shew the necessity of this section. In Behar this is done by shifting ryots from one field to another. In Bengal landlords frequently compel ryots of old standing to execute kabuliyats by the terms of which they are mere tenants at will. The first Munsif of Barisal has frequently come across such instances in course of his judicial work, and states that during the present rent bill agitation zemindars in Backergunge and Mymensing are busily engaged in taking kabuliyats from ryots by which the latter bind themselves to occupy the land only for a limited number of years.

24. Mr. Reily objects in common with all zemindars to the extension of the occupancy right. He argues that in this district specially lands were brought under cultivation by zemindars since the permanent settlement, much the same way as lands are now being brought under cultivation in the Sunderbuns, and that Government has therefore no right to interfere between zemindars and their tenants in respect of such lands. He says "It is clear Government reserved to itself the right to legislate for the benefit of the ryots who held lands which were under cultivation at the period of the permanent settlement, but not lands which were then in jungle, as dacoits and wild beasts of the forest were then only inhabitants. Lands which have been brought under cultivation since the permanent settlement appertain to the zemindars and the Government cannot under the conditions of that settlement interfere with the rights of the zemindar in such lands.

The whole of the district of Backergunge has been cultivated in the manner described above. The tenures which exist at the present time have been created much in the same manner. The Government at the period of the permanent settlement were anxious to have the jungle cleared, and for this reason granted permanent rights to the zemindars to induce them to have the jungle lands brought under cultivation, The zemindars have fulfilled their contract, and it is unjust to come in between them and their tenants, and bestow upon them rights and privileges which they never expect."

25. In the above extracts, I have fully stated Mr. Reily's arguments, but I wholly dissent from them. Government made no reservation in its right to legislate on behalf of the ryots in lands which were then covered with jungle, and made no contract which debars it from extending occupancy rights to the cultivators in such places. When the occupancy right was created in 1859, recently cleared tracts were brought under its operation as well as places which had long been under cultivation, and this was perfectly legal. If the argument quoted above was valid, legislation on behalf of the ryots would be stopped over one half of Bengal, because one half of Bengal was covered with jungle in 1793. I see no reason therefore why the provisions of this bill should not be extended to Backergunge as the provisions of the Act X of 1859 were extended.

26. A question has been raised in the Government letter whether the ryot should be capable of holding land on an occupancy title over an entire estate when it extends over a large tract of the country, and over more than one district. A prominent example of this is the estate of Idilpur, which is owned by Babu Kali Kissen Tagore and lies partly in this district and partly in Furreedpore. I do not see any harm in considering the estate as the proper unit of area even under these circumstances. Both the ryots and the zemindars habitually consider the estate as the unit, and they will therefore easily comprehend the rule that a settled ryot in one part of the estate is a settled ryot in every part of the estate. The most ignorant ryot, who sometimes cannot say in what thana his village is situated, knows under what zemindar he lives, and the provisions of the law therefore which make the village and the estate the units of area for the operation of the sections relating to occupancy rights should be allowed to stand.

This was the opinion of the officers present at the divisional conference at Dacca.

27. The other question which has been raised in the letter of the Bengal Government is whether the estate according to the meaning of these sections should be what it was 30 years ago. There has not been much alteration within the last 30 years in respect of boundaries of estates, and I do not think many butwaras have been completed within this period. At the same time there is no reason why the word estate according to the meaning of this section should not be what it is now rather than what it was 30 years ago. It is now declared for the first time that a settled ryot within one part of an estate is a settled ryot all through the estate, and in the absence of any reasons to the contrary, the estate should be considered as it exists now rather than as it existed 30 years ago.

At the Dacca Divisional Conference, however, it was agreed to let the section stand as it is.

28. *Section* 31.—I approve of the incidents of occupancy right enumerated in section 31. The most important right secured to the occupancy ryot is the right to transfer his holding by clause (*f*) of section 31. As Government has finally accepted this principle, it is not necessary to discuss the question at length; but I will only mention two important reasons for which I entirely approve of the principle. In the first place the provision simply legalizes a fact which exists nearly all over Bengal. In many districts the sale of occupancy right is legally recognized; in others the right, though not legally recognized, is freely exercised by the ryots all the same. In this district the sale of ryots' holdings is legally recognized in the subdivision of Dakhin Shahabazpore, and in other parts of the district the right though not legally recognized, is freely exercised by the ryots. Even in the Government estate of Tushkhali in Perozepore subdivision, where things are managed with greater care and supervision than in most estates of private zemindars, ryots often sell their holdings to others; and though we do not admit the right, we accept rent from the purchaser and thus recognize the sale in practice. It is exactly the same in private zemindaris: ryots' holdings are being sold openly every day and such sale deeds are registered in Sub-Registry offices, and zemindars and their agents have little hesitation in recognizing the new purchasers as their ryots.

29. The following extracts from the subdivisional reports on the subject received last year show that the sale of ryots' holdings is by custom universal in this district. The Perozepore officer writes: "The mass of cultivators—I mean the *kurshadars*—enjoy the right of occupancy and they have the power of selling their lands whenever they wish. They do not frequently sell their *jotes*, but when they do they do it without obtaining previous permission from the zemindar."

The Patuakhali officer denies that the ryots have any right to sell their holdings, but adds that they do so, and says that even in Government khas mehals directly managed by the Collector "the occupancy ryots are in the habit of selling their jotes to others according to custom, even without the permission of the Collector, and these transfers were not held to be invalid in the Civil Courts."

The Bhola officer writes: "It is customary to sell the jotes by ryots enjoying a right of occupancy. They always sell the jotes without even the knowledge of zemindars or superior tenure-holders." The same practice obtains in the sudder subdivision. The figures that I have compiled from the different Sub-Registry offices in this district show that within the six months from January to June of the present year 291 sale deeds of ryots' holdings were registered in this district, excluding Bhola subdivision, where such sales are legally recognized.

30. In this manner the right of sale of occupancy holdings is legally recognized in many parts of Bengal and is freely exercised in others. Occupancy right has a market value legally or practically, and is a property in the strictest sense of the word, and it is a property on which the cultivator always falls back in difficulty or distress. To withdraw the right of sale will be virtually to confiscate the property now held by millions of occupancy ryots, and to declare that their sole possession on earth, which had so long a real value in the market, is now valueless. The consequences of such legislation are too apparent to need any mention.

31. This is my first reason for approving of the clause which legalizes the right of sale in the case of occupancy holdings. My second reason is that the recognition of such a right will, without doing any injury to the interests of the landlords, give much encouragement to the ryots in their work of improving their holdings. It is a well-known fact that in this district, as in most other districts, the improvement of the land proceeds from the ryots and the ryots alone. When the landlord raises a *bund* against inundation or excavates a tank, he realizes the cost of it, and often much more than the cost, from the

cultivators. On the other hand, cultivators constantly improve their holdings by planting fruit trees, deepening tanks, and making irrigation channels, and it would be encouraging them in their beneficial works to legally declare their right of sale to the holdings which they thus try to improve.

32. The recognition of a free right of sale of occupancy holdings cannot injure the interests of the landlord in the smallest degree. It will not hinder but rather facilitate the collection of the rent due to him. The landlord will no doubt be injured if the ryot sells his holding in a fraudulent manner or to a party hostile to him. Against such proceedings only the landlord should be protected, and I will speak of this further on.

33. *Section* 32.—I object to the landlord's right of pre-emption in the case of voluntary sales. I will state my reasons as briefly as I can.

34. In the first place no such right now legally exists in the many parts of Bengal, where the sale of occupancy holdings is legally recognized and no such right is practically exercised in those parts of Bengal in which the sale of occupancy holdings is not legally recognized. In the one case as well as in the other, but pre-eminently in the former case, an unjust restriction is now being placed for the first time on a right which the cultivators have enjoyed for many years past The market value of occupancy holdings will suffer on account of the restrictions (unknown before) which are now imposed on the sale of such holdings.

35. In the second place there is no valid reason why landlords should be allowed this right of pre-emption when the sale is a *bona fide* one and when a cultivator sells a holding to his brother or some other relative or friend in order to meet some unforeseen and pressing expenditure. A ryot seldom sells his land except under sudden and pressing necessity, and to give the landlord the right of pre-emption under such circumstances, and to compel the vendor to comply with the dilatory procedure laid down in section 32 would be virtually to stop the sale when the necessity is pressing and so to withdraw his right of sale. In cases of fraud or when the landlord's interests are in any way injuriously affected he should have redress, but in cases of *bona fide* sale by one ryot to another the landlord should not be allowed to intervene.

36. I was anxious to get the fullest discussion on this subject in the meeting of zemindars and others which I convened in Barisal to discuss this bill, and the only argument which was urged for reserving for the landlord the right of pre emption was one of a social nature. Mr. Reily, in the notes with which he has favoured me, has also alluded to this argument and I will state it in his words: "This class of men (middle class of talookdars) have their *Napits*, *Dhopas* and *Bhuimalies*, &c., settled in habitations round their *barees*. These men perform certain domestic services and pay a nominal rent or no rent at all. To declare arbitrarily that such holders shall have a right of occupancy independent of the talookdar will dislocate the domestic arrangements which have existed from time immemorial." I fully admit that this objection may apply in some isolated cases, but the objection will be entirely removed by adding one line to section 30 of the Bill that there will be no right of occupancy to lands held under conditions of service. I may add that practically the inconvenience predicted has not been felt in the numerous districts and parts of districts in Bengal where free sale of ryots' holdings is legally recognized and domestic arrangements have not been dislocated.

37. In the third place it is pretty certain that this right of pre-emption will be abused. In districts where the cultivators are resourceless they will be unable to comply with the dilatory and expensive procedure laid down in sub-sections (2), (3) and (4) of section 32, and one of the principal objects of the present bill therefore will be entirely frustrated. In places where zemindars have no objections to ryots making *bona fide* sales of their occupancy holdings, the underlings of the landlord, the tahsildar or gomasta on 2 or 3 rupees a month, will extort a large bonus under colour of his master's right of pre-emption. And in instances in which ryots are deceitful they will evade the provisions of this section. The vendor and the vendee will agree nominally on a disproportionate price for the holding. The landlord will of course refuse to buy the holding at such price, and the holding will then be sold at the real and proper price which may have been scarcely agreed upon by the parties.

38. Lastly the purchase of such holding will be of no use to the landlord, as under the operation of section 28 of the bill it will immediately cease to exist. The landlord therefore is empowered by section 32 to spend money for a right which is of no value to him, and which will cease to exist immediately he buys it. It is perfectly plain therefore that he will refuse to do so except in cases where the ryot is trying to practise a fraud or is selling the holding to a hostile party. Would it not then be simpler to omit the complicated provisions about the right of pre-emption, and to give the landlord a simple and efficacious redress in such cases in which he really requires redress? I would only add here that the zemindars themselves, on whom it is proposed to bestow the right of pre-emption, do not appreciate it Rai Kristo Das Pal Bahadoor calls it "more a shadow than a substance," and the Maharajah of Durbhunga calls it "the phantom right of pre-emption." The creation of this right will be a real loss and a source of harassment to the ryots, and will be a gain to nobody except to dishonest and grasping underlings of zemindars.

The officers present at the Dacca Divisional Conference agreed to abolish, or rather not to create, this right of pre-emption.

39. I would therefore omit section 32, and in its place give the landlord the clear right to cancel a sale when it is proved to be fraudulent and made to a hostile party. This

is a real right which landlords require very much in this district. Under the well-known *simlea* system so prevalent in this district, a ryot, whenever dissatisfied with his landlord, goes and sells his holding to a hostile party, and takes a sub-lease from him, and this procedure causes endless annoyance and trouble to landlords. What the landlords want is a clear right to cancel such sales detrimental to their interests. The procedure I would lay down is the simple procedure which I have indicated in paragraph (21) in the case of sale of tenures. The registration of occupancy holding should be made compulsory under the provisions of this bill. Sub-Registrars, who register the sale of occupancy holdings, will require the payment of an additional rupee for service of notice on the landlord, and he will remit this sum to the Collector with an intimation of the contents of the document. The Collector will then serve the notice to the landlord and ask him to show cause within a month why the sale should not be confirmed. If no cause is shewn, the sale will be confirmed; but if any objection is raised by the landlord, the Collector will refer the matter to the civil court, and the civil court will order the sale to be cancelled if it is satisfied that the transaction is fraudulent or that the sale has been made to a person hostile to the landlord or to a professional money-lender. This last clause may be found useful in Behar.

40. I would ask for the adoption of the procedure indicated in the preceding paragraph, even if the right of pre-emption is created in favour of the landlord, for the procedure in simpler, safer, and less liable to abuse than the procedure laid down in section 32. I beg to call particular attention to sub-section (5) of section 32, which fixes no limit of time. It would be monstrous to allow a landlord the power to declare a sale void a year after the sale has taken place, and after he has continued during this period to accept rent from the new purchaser and so practically recognised the sale.

41. *Section* 37.—I have already stated in paragraph (13) my reasons for thinking that section 37 should be omitted altogether. To those reasons I have nothing to add here.

This was agreed to at the Dacca Conference.

42. *Sections* 39 *to* 50.—These sections relate to enhancement of rents payable by occupancy ryots. Mr Reily, the Superintendent of Nawab Ahsanullah's estates in this district, objects to all restrictions of enhancement, and asks why should the courts be restricted to four annas on the rupee over the previous rent? Why should the courts be restricted not to enhance rent more than double the previous rent? Why should the courts be restricted to seven years and fifteen years, or to any restrictions whatever? I have quoted the above as representing the zemindars' view of the question, but I do not think it necessary to answer the queries.

43. The "prevailing rate" has been retained as one of the grounds of enhancement. I do not think there is any such thing in this district as a prevailing rate. Of course an average may always be struck off the rents paid by different ryots in a village, but this cannot in any sense of the word be called a "prevailing rate." As I will state hereafter, rents have been raised all round in the district on account of the increase of prices since the famine of 1874, and this has gone on to such an extent, that in any year in which the price of crops goes down, the actual cultivators find a difficulty in paying rents. No "prevailing rate" exists in the district or is recognized, and the inclusion of this ground for enhancement will simply be abused by the production in evidence of collusive and fictitious rates for forcing up rents.

The First Munsiff of Barisal mentions in his report a remarkable attempt which was made in April last to enhance rents in 12 analogous suits by fabricating evidence of fictitious "prevailing rates," and he states that one principal reason of the combinations among ryots is the frequent and incessant attempts made by zemindars to raise the "prevailing rate."

The officers present at the Dacca Conference agreed to abolish this ground of enhancement altogether.

44. With regard to the limits set to enhancement, I greatly regret the exclusion from the bill of the maximum limit of one-fifth the gross produce which found a place in the previous bill. The Select Committee believe that it would be impossible to ascertain in each instance the average annual gross produce. I may be permitted to mention that in my enquiries in the villages both in this district and in the districts of Western Bengal, I have never found any difficulty in ascertaining what the gross produce was. In lands on which paddy alone is grown the villagers have always told me approximately what the produce per bigha was, and this amount reduced to Rs. would represent the annual gross produce of such lands. In lands which are capable of growing a cold weather crop also, the value of such crop per bigha can very easily be added to the value of rice. In lands which require to be let fallow for one or two years, a proportionate deduction has to be made. On the whole the calculation is simple and always approximately correct, and it is a much safer ground to go upon in enhancement suits than all such fictitious grounds as "prevailing rates."

45. I regret the exclusion of this maximum limit because with that limit we have lost the only one protection against rack-renting which would be found efficacious in practice. All the other complex safeguards provided in the present bill will be completely ignored and evaded in practice. The present bill provides safeguards against excessive enhancements (a) by suits in court and (b) by private contracts which will be registered. But landlords will go neither to the civil court nor to the registering officer in order to secure enhancements. Where landlords are strong they can always force up rents without suing for enhancements. I am aware of remarkable instances of such proceedings in Nuddea and Burdwan and other western districts. Even in Backergunge rents have been forced up since the date of the famine of 1874 without a single landlord stepping into the civil court. And when rents have once been forced up, the landlords will always be able to

prove in court, should the question ever arise, that the rate of rent then paid is and has been the prevailing rate, and cultivators will be unable to rebut this statement.

46. Judging then from the ways in which rents are forced up by landlords in practice, I have no hesitation in stating that the limits now prescribed against excessive enhancements will be wholly inoperative against rack-renting. On the other hand, the rule of maximum rent in proportion to produce was a simple and effective rule which would have saved ryots from rack renting. It would prevent much litigation; it would prevent the fabrication of much false evidence about the rates of rent and the rise in prices; and its operation would have been wholesome and effective. A simple enquiry by a revenue officer would at once disclose what the average produce in the fields of a village was, and if the civil courts declined to allow over 20 per cent. of this as rent, all indirect attempts at rack-renting by putting pressure on ryots or by adducing false evidence would be stopped at once. In eastern districts such a simple rule would also have done incalculable good by preventing that tension of feeling between the landlords and ryots which is daily on the increase. I do not altogether blame the landlords for this, because in the absence of any fixed rule they believe themselves entitled to all that the ryots can spare; nor can I blame the ryots, as in the absence of any fixed rule try to keep as much as they can. The good old rule—the simple plan—that they should take who have the power, and they should keep who can, seems to be in active operation in Eastern Bengal. The law does not afford any solution; the revenue officers are powerless to mediate in the absence of any rule; and the tension of feeling in Backergunge, in Mymensingh, and in other places is becoming so intense that peace is only preserved by constant watchfulness, and by the application of those coercive measures of the law which were intended only for rare and emergent cases.

47. As the only practically efficacious bar against excessive enhancement,—as the only measure which can prevent rack-renting in Behar and incessant and wide-spread disputes and ill-feeling in Eastern Bengal,—the maximum limit rule should be enacted into law, and should not be abandoned. The uncertainty as to how much of the produce of land the zemindar is entitled to and how far he could force his enhancement is the very reason which has made fresh legislation on this subject necessary. It was strongly felt on the one hand that landlords should be helped in obtaining reasonable enhancements and it was strongly felt on the other hand that rack-renting should be stopped, and that settled ryots should be protected against excessive enhancements. The simple, question therefore is what is reasonable enhancement, and it is necessary that this question should be answered once for all in a concrete form. I am aware that such a fixed rule will be difficult in its application in some places, but such difficulties can be overcome by patient enquiry, while in most parts of Bengal, no difficulty whatever will be experienced. The gain on the other hand from such a rule, from an administrative point of view, will be immense. The rack-renting which has been going on in Behar and in some parts of Bengal will be stopped by the operation of this simple rule, and the growing tension of feeling in Eastern Bengal between landlords and ryots, which is caused by each party feeling that it has been kept out of its just dues, can only subside when it is authoritatively declared what those just dues are. It would be better, in my opinion, to postpone legislation altogether than to pass this Bill without the one positive check it contained on rack-renting in Behar and rent disputes in Eastern Bengal.

48. I will illustrate the above remarks by the state of things in this district. As I have stated before, landlords have taken advantage of the rise in prices of paddy which took place after the famine of 1874, and have forced up enhancements to such a high limit that cultivators are unable to pay rents when the price of paddy goes down. Baboo Dina Bandhu Sen, who speaks from accurate and considerable knowledge on the subject, states that "the rate of rent of the occupancy tenants have risen to the maximum, so much so that whenever there is a little fall of price in the rice market, the tenants find great difficulty in paying their rents. It is a well-known fact that for five or six years, previous to the last three or four years, rice sold very dear, and the tenants competed with each other for land and have increased their rents; and now whenever there is a fall in price a huge outcry is raised." The information which I have received from every other source corroborates what Baboo Dina Bandhu says, but the above statement does not apply to the subdivision of Bhola where the ryots are well off, and rents have not been forced to a maximum. In nearly all other parts of the district rents payable by ryots have been forced to a maximum That the condition of the villagers is still one of comparative affluence as compared to that in Western Bengal is largely owing, as I have said before, to the existence of numerous tenures intervening between zemindars and ryots. Many ryots hold tenures also, while the existence of so many tenures and tenure-holders among the mass of the people leavens the condition and the status of them all.

49. While the above is a fairly accurate account of the district generally, matters have assumed a worse aspect in some particular tracts. In some villages near Ulania, in thana Mendigunge, the zemindar, Baboo Kali Kissen Tagore of Calcutta, has leased land to the izaradars at a high sum, and the izaradars, in order to recoup themselves and make a good profit out of it, tried to enhance rents beyond all bounds by coercive measures. The result was that the ryots resisted and combined, and the combination still exists. All the principal izaradars and ryots are bound down to keep the peace, and the utmost watchfulness is necessary to preserve order. Much the same state of things prevails in Bamna, where the talukdars got largely into debt from improvidence and other causes, and are now trying to pay off the whole debt by levying large contributions from the ryots.

Breaches of the peace have frequently occurred there in previous years, and a special police force is now quartered there to keep the peace. In other places the state of things is not so bad; but in Patuakhali subdivision the rich and powerful zemindars of Kalaskati and Bowfal have forced up rents beyond all reasonable bounds, and the ryots are badly off, and have to borrow from their zemindars for the most part of the year. On the other hand the Gaspers of Dakhin Shahbazpore are unable to realize even a proper rent from their ryots. To sue in court would be useless, as the zemindars cannot prove what the rate of rent is, and they are more or less at the mercy of their ryots.

50. It will then appear that the one fruitful cause of all this disturbance is the uncertainty of the rate of rent which is properly demandable. All the provisions laid down in the present Bill will not remove this uncertainty. A simple rule of maximum rent based on the average produce is all that is required. It will prevent zemindars from making unreasonable demands; it will prevent ryots from unjustly withholding fair rents; and it will enable administrative officers to mediate in cases of dispute with some reliable rule as his guidance.

The recommendation here made was partially accepted at the Dacca Conference, and it was agreed to adopt the rule of maximum rent in proportion to produce in the cases of enhancement by private agreement. I adhered to my opinion that the rule should apply in all cases, *i.e.*, in enhancements in court as well as out of court.

51. When a rule of maximum limit, in proportion of the produce of land, has been enacted, I would not object to enhancement by private contract duly registered. Such enhancements by private arrangements cannot be stopped without causing much injury to landlords, as it is the universal practice now to obtain enhancements in this way. I would not object to an increase of four annas in the rupee in case of such enhancements out of court, provided that such enhancements held good for the next fifteen years in every case, whether the full four annas or a smaller increase was obtained. Frequent enhancements are a cause of much irritation and ill-feeling, and it should be definitively enacted therefore that in no case should an enhancement be allowed within fifteen years after an enhancement has been obtained.

52. I would lay down the same rule for enhancements in courts, as I attach much importance to the argument that "the equalization of the limits of enhancements in and out of courts tends to discourage litigation," "and any arrangement which would bring the parties together to settle such questions between themselves without the intervention of the courts would be a great gain." I would enact therefore that enhancements may be allowed up to 25 per cent. by courts whatever the ground of enhancement may be, and that rents once enhanced shall not be enhanced again within the next fifteen years. Section 212 of the Bill provides for an exception to this rule in the case of reclamation of chur lands, and that is the only case in which any exemption from the rule is needed.

53. I fully share the apprehension expressed in paragraph (11) of the Bengal Government's letter that to allow some occupancy ryots to hold at a higher rate than others will have an injurious effect, and will tend to the forcing up of all rents to the maximum rate of rent. A worse result than this will be that such differences first between occupancy rates and non-occupancy rates, and then between occupancy rates and non-occupancy rates under the operation of section 42, will leave open a wide door to mischievous and harassing litigation, which will always end in the submission of the ryots to any terms which their landlords may dictate. I am strongly convinced that it is necessary to avoid all distinction between occupancy rents and non-occupancy rents, a distinction which is not now recognized in the land law of Bengal. As a matter of fact there is no such distinction now in this district, and I believe there is none such in most parts of Bengal. To introduce such a distinction would open a wide door to litigation, and would strengthen the desire and the endeavour on the part of landlords to prevent the growth of occupancy rights altogether. It is enough if we give the settled ryots more fixity of tenure than we allow to the mere squatter: we cannot safely recognize any distinction in the rates of rent payable by them.

This was the opinion accepted at the divisional conference at Dacca.

54. The subject of bastu land is one of special importance in this district, as in no part of Bengal probably do the ryots take such pains to improve their homesteads as in Backergunge. The whole district is one level plain, very little higher than the high water level in spring tide. That bastu lands are more elevated than the surrounding fields is almost entirely owing to the labour and expense of the cultivators, who make these homesteads. The cultivator generally selects a site in the middle or in one side of their fields and digs a deep square trench all round, and perhaps if he is a man of some means excavates a small tank in front. With the earth thus obtained he raises the entire place selected for the homestead to a height of about a foot or two feet above the surrounding fields, and also erects a bund alongside of the ditch and plants it as well as the homestead with fruit-trees. Plantains are selected at first as they take root as soon as they are planted, and *Mandar* trees are also planted. In the shade of the *Mandar* trees young betel-nut and cocoanut trees are carefully planted and looked after, and in the course of five or six years the whole *baree* begins to look decent and shady, and in a few years more the trees yield fruit. During the whole of this time the entire expense and labour is the ryot's own, and it is by such patent labour and expense that the homesteads of the Backergunge ryots look like one long succession of gardens rich with fruit-trees.

55. In this work and improvement of the country the Backergunge ryot is not sufficiently protected. In many cases he takes a permanent lease of the land which he wishes to convert into his homestead, but even then the rent which he has to pay is higher than that of the surrounding land, for no other reason than that he wishes to improve it at his

own expense and to live in it. In most cases he cannot get any permanent lease, and then his case is worse. Cases of ejectment from homesteads are not frequent, but the injustice of such cases when they arise is keenly felt, and on no subject have I received such constant complaint, even from the most respectable villagers, as on the subject of ejectment from homesteads. In the land which the cultivator tills, he acquires a right of occupancy; but in the homestead which he improves with so much labour and expense, and in which he lives with his wife and children, the present law gives him no security of tenure. No part of the rent law requires modification so urgently as the provisions relating to homestead land.

56. I quote with much pleasure the views of Baboo Dina Bundhu Sen, who agrees with me in considering the present law on the subject unsatisfactory:—"We have no legislative enactments on the subject. There is no local custom upon which the Civil Courts can depend. When a case of ejectment of *bastu* land comes before the Civil Courts, they are guided by judge-made law. The tenancy is determined by a notice, and a suit for ejectment is brought at the expiration of the period prescribed by Act IV of 1882, section 106. Where there is no permanent improvement done by the tenant, he is ejected. Since there is no settled rule of law on the subject, the questions which often come before the Civil Courts become very vexatious. When the *bastu* forms a portion of the occupancy holding, the tenant is ejected from his *baree* under the same rule of law by which he is ejected from the land he cultivates. The homestead land of the ryot is indeed valuable property. The tenant plants *shupari* and cocoanut and other fruit-trees which yield him profit; sometimes he digs tanks for which he pays a *salami* or bonus to the zemindar. In some parts of the district the homestead lands are very valuable, where the tenants make regular gardens at their own expense and labour. The rents of *bastu* lands are scarcely enhanced, and, as a matter of fact, all the improvements are made by the ryots. There will be no injustice done in the interests of the landlords if no enhancement be allowed on *bastu* lands. The rate of *bastu* lands is much higher than other lands. There are some places in the district in which the rate of *bastu* and *nul* is the same, but those are churs and newly reclaimed jungle lands. It is very desirable that the Legislature should make some law for our guidance, especially so when there is no special custom by which courts can be guided."

57. There is no custom in this district by which a tenant, who is ejected from his holding, is entitled to retain possession of his homestead lands. When the homestead is a part of the occupancy holding, the ryot is simultaneously ejected from the one and the other. When the homestead is a separate tenancy altogether, a separate suit is brought, and the result of such suits is very uncertain, and, as Baboo Dina Bandhu puts it, such suits are very vexatious in the absence of any clear rule of law. It is quite certain some special provision of law is necessary on the subject.

58. When the tenant makes his homestead within his holding (occupancy or non-occupancy), the homestead must be considered a part of his holding, and he must be held to be liable to ejectment from his *baree* under the same rules under which he is ejected from his holding. Nor in my opinion can he be protected altogether from enhancement for the portion of the holding converted into his homestead. For he makes his homestead according to the power reserved to him by section (31), clause (*b*), and section 87, clause (*f*) of the Bill, and there is no reason therefore why his action, which under the Bill is independent of the landlord's permission, will deprive the landlord of the enhancement to which he would have been entitled if no homestead had been built. It would be fair to both parties if, under these circumstances, the rent for the homestead continues to be the same as the rent of the surrounding paddy-fields, and no special enhancement is allowed to the landlord because it has been converted into a homestead. The ryot will be glad to be able to construct a *baree* without paying a heavy *salami* or bonus, and he will be content to hold the *baree* with the same fixity of tenure and at the same rate of rent as the paddy-fields included in the same occupancy holding.

59. It is when a homestead is held as a separate tenancy that some special provision is required. The provisions of section 216 of the Bill are not enough; local custom fails to give the Bengal ryot the protection which he requires. The rate of rent in such cases must, I think, be allowed to be settled by special contract, as the value of sites varies in every village in Bengal through various reasons, and no general rule can be laid down. The rent being thus settled by contract, I would bestow on the dweller the right of occupancy after three years' continuous residence in the house, and I would enact that the rent fixed would be liable to no subsequent enhancement. I think these provisions are necessary and equitable, and they will give the Bengal villager the protection he requires from being turned out of his homestead at the mercy of the landlord.

It was resolved at the Dacca conference that a ryot should acquire occupancy right in *bastu* land not forming part of a holding after three years' occupation, and that he should get compensation if disturbed before that period.

60. *Section* 51.—I think the provisions of this section are fair, and I do not suggest its alteration having regard to the facts of this district.

61. *Section* 53—With regard to this section and section 64, clause (3), I think a fixed proportion of the crop cannot be fairly considered as the natural and equivalent antecedent of money rent invariable over a number of years.

62. *Section* 52.—With reference to the enquiries made in the Government letter, paragraph 14, I beg to state that the price-lists submitted only show the prices prevailing in the district head-quarters and in the head-quarters of the sub-divisions. They do not represent

the prices prevailing in the interior, and are therefore perfectly valueless for the purposes of this Bill. These price-lists cannot now be verified by the books of grain dealers, because such dealers have not kept the prices at which they made purchases in past years, and as each dealers buy in different places, the prices which they paid will necessarily vary. A regular enquiry, such as has been ordered in the latter portion of this paragraph, has not yet been made for want of time necessary for such an enquiry; but from what I have learnt, it will be perfectly useless to make any such enquiry, and it will be impossible to construct from the records of grain merchants any reliable list of the staple food-crops in this district for the last fifteen years. The statement showing rice, *kalai* or *kheshari* and *mushuri* as the staple crops of this district seems to be correct.

Betelnut and cocoanut are extensively grown in Backergunge, but in homesteads and not in cultivated lands.

63. I think that, in ordering enhancement on the ground of a rise in prices, it would be fair to make some deduction to cover the effect of these increased prices on the cost of cultivation. The court will use its discretion in fixing the amount.

64. I have only one more remark to make under this section. Clause 4 of this section enacts that the Collector's price-list will be conclusive evidence of the prices prevailing. The price of rice varies in this district almost in every thana, and often in different parts of the same thana, according as the places are nearer or further from exporting markets. The Collector's list then, in order to be of any use, must show the price of the staple crops from week to week in every thana, and sometimes in different markets in the same thana. As the measures and weights are different in different places, the utmost care in calculation is necessary. It will be difficult for the Collector to find men in so many different parts of the district who will do this work with the degree of accuracy, attention, and care such as will make the price-list fit to be used as conclusive evidence in cases between ryots and zemindars.

CHAPTER VI.

Non-occupancy Ryots.

65. The protection afforded to non-occupancy ryots by this Bill is wholly inadequate. There is no limitation whatever fixed to the amount of rent which the landlord may demand from a non-occupancy ryot when he is first admitted to the occupation of land. As Mr. Reynolds points out in his note, agricultural holdings must from time to time fall into the hands of the landlords, and if the landlords are left free to demand any rent they like for these holdings, they will steadily force up the rents in the first instance of the non-occupancy ryots, and gradually of the entire body of the tenantry. I apprehend a worse consequence also from this broad distinction made in regard to rent between occupancy ryots and non-occupancy ryots. As I have pointed out in paragraph 53, it will lead landlords to exert themselves to prevent the growth of occupancy rights altogether, and to frustrate the very object of the present legislation as far as possible. That such attempts are even now made in Behar and in Eastern Bengal is well known, and is stated in the Bengal Government's circular letter, and Rai Kristo Das Pal Bahadoor defends this conduct because he argues the landlord "has acted within the law, and it would be unreasonable to suppose that he has acted wrongly, as to suppose that a tradesman is wrong in suing his debtor before the time which would, under the Law of Limitation, bar his claim." I have no doubt this view commends itself to the class which Rai Kristo Das Pal Bahadoor represents, and that, if they see a clear benefit to themselves by preventing the growth of occupancy rights, they will feel no hesitation in trying to do so. Much litigation will necessarily ensue, and I seriously apprehend the cultivators will, in the majority of instances, have to yield from sheer inability to fight. I have known such instances in more than one district in Bengal, and I would not like to see it repeated in others. It is undesirable, on the broad ground of expediency, to make a marked distinction in the rates of rent payable by occupancy ryots and non-occupancy ryots, and thereby to give the strongest possible motive to the entire body of landholders to prevent the growth of that occupancy right which it is the first object of the present Bill to bestow on the great mass of cultivators in Bengal.

It was resolved not to allow any such distinction at the Dacca conference.

66. I would therefore fix for non-occupancy ryots the same maximum limit of rent as I have recommended for the occupancy ryots, viz. one-fifth the gross produce of land. The rule is simple, clear and workable; it will prevent rack-renting, and it will do away with the strong motive under which landlords will otherwise strive hard to interpose difficulties in the way of ryots acquiring occupancy rights.

CHAPTER VII.

Under-Ryots.

67. The limits fixed to enhancement under this section are not sufficient, and in many instances will not be workable. A ryot holding a large area often sublets portions of the same, and though the rent of the entire holding of the ryot is well known, it will sometimes be difficult to find out at what rate of rent he holds. Any fictitious figures many thus be given to force up the rent paid by the under-ryot. 25 per cent. above the rent which the ryot pays should be the maximum of rent from an under-ryot under

It was resolved at the Dacca conference that the under-ryot of the lowest grade, that is, the actual cultivator, should not pay more than 25 per cent. over and above what the occupancy ryot pays for the land, whatever the number of the intermediate under-ryots.

all circumstances, whether any agreement has been registered or not. This will bring up the rent of the under-ryot to a maximum 25 per cent. of the gross produce (*i.e.* if one-fifth the produce is the limit fixed for ryots), and this is the highest proportion which any actual cultivator should be required to pay as rent.

CHAPTER VIII.

General Provision as to rent.

68. The receipt form given in Schedule III does not give the name of the estate. This should be entered after the name of the thana. There should be a provision in the Bill empowering Government to supply printed receipt forms at a trifling cost. Most of the better class of zemindars have now introduced printed forms, and in many instances where such forms have not been introduced the omission is, I am informed by respectable zemindars, often due to dishonest motives on the part of zemindars' underlings. Section 70, clause (2) now directs that a counterfoil should be kept by landlords, and section 72, clause (3) prescribes a penalty if such counterfoil be not kept. If in addition to these provisions Government undertakes to supply printed receipt forms at a trifling cost, the use of such forms will be almost universal in the country, and much fraud and forgery on the part of ryots, as well as of zemindars' servants, will be rendered impossible. I have no doubt the work of Civil Courts would be rendered easier under such circumstances.

69. Mr. Reily, in arguing against the extension of occupancy rights, makes the following remarks on the subject of improvements ;—"Will any body of ryots, with occupancy rights, club together to cut irrigation channels, and go to the expense of pucca sluice-gates and dredgers to improve the land? It is a favourite argument to blame the zemindar for not taking the lead in the improvement of agriculture, and unfavourable comparisons are drawn between him and his English compeer. But the land in England is the property of the landholder; he has no Sale law constantly dangling over his head like Damocles's sword by a single hair which may deprive him of his possessions at any moment; and which acts as a bar to any improvements owing to the uncertainty of his title. In addition to this, the Government, by bestowing the right of occupancy on every holder of land, seem determined that the zemindar shall have no chance of ever having any desire or inducement to improve agriculture. For what landholder will lay out a single farthing on, improvements when his tenants alone will reap the benefit of such improvements?"

70. The above argument undoubtedly represents the zemindar's view of the question but I do not think it contains a fair statement of facts. In the first place, the requirement to pay up Government revenue does not make the title of zemindars (and of big zemindars especially) so precarious and uncertain as to debar them from attempting to improve their property: some other explanation must be sought for their general backwardness in the improvement of agriculture. In the second place, it is not correct to say that this Bill, by extending occupancy rights, prevents zemindars from attempting any future improvements because the tenants alone will reap the benefit. The law distinctly provides that tenants alone shall *not* reap the benefit; landlords are allowed to enhance rents on the ground of their improvements, and landlords therefore, who are disposed to act in this way, will have ample scope for making future improvements to their own profit.

71. As a simple matter of fact, ryots make most of the agricultural improvements all over Bengal, and it is only for that this should be recognized, and they should be protected and encouraged in such works, and this is what this chapter contemplates doing.

CHAPTER IX.

Miscellaneous Provisions.

72. *Section* 90 (1)—Will operate with much harshness against the ryots in this district. There is very little practical distinction between occupancy ryots and non-occupancy ryots, and ryots and under-ryots, all make improvements. In the first place, they make their valuable homesteads at considerable expense; in the second place, they dig tanks which are necessary for drinking purposes in most parts of the district, as the river water is brackish in some parts of the year; and lastly, they put up in some places embankments on the sides of khals, and sometimes right across khals, in order to prevent their crops from damage by high floods. Section 90 (1) gives non-occupancy ryots the right to make homesteads, but does not speak of the excavation of tanks, which is often necessary in this district; and it does not give the non-occupancy ryots the right to make any other improvements, like the construction of embankments. Under-ryots are not even mentioned in this chapter, and this, I think, is a simple omission.

73. *Section* (90)—Should therefore be altered in the interests of agricultural improvements. Landlords seldom make such improvements in any part of Bengal: ryots universally make these improvements: and it is necessary therefore, in the interests of agriculture, to empower ryots of all classes to make such works.

74. I would make no alteration in section 88 and section 89, which give to fixed ryots and occupancy ryots the legal right they require for making improvements in their lands. Non-occupancy ryots and under-ryots cannot be allowed the same privileges, because their holdings are not transferable, and may revert to the zemindar

if they are ejected. But I would give to these classes of ryot the right to make suitable dwelling-houses and homesteads, including the right to excavate tanks and plant fruit trees within such homesteads. They should also be empowered to make all other improvements enumerated in section 87, subject to a right of objection on the part of the landlord. If the landlord objects when the improvement is under construction, or within one month after it has been commenced, by a written application to the Collector, the Collector will take the objection into consideration, and will, after such enquiry as he thinks necessary, either order it to be stopped or to be completed. In the latter case, the non-occupancy ryot, or the under-ryot who makes the improvement, will have no right to compensation for such improvement if he is ejected afterwards from the holding. I think such a provision will sufficiently protect the interests of the landlord, and at the same time give the ryot of all classes the right which he requires for making agricultural improvements. It will save the landlord from compensation when an improvement is made against his recorded objection, but it will still allow the non-occupancy ryot, or the under-ryot, if he chooses, to make the improvement at his own risk and cost.

This proposal was not agreed to at the Dacca Conference. "Suitable dwelling-house" was held to include such fruit trees as are planted in homesteads according to the custom of the district, and was also held to include such tanks as are necessary to raise the homestead land. Section 90(2) was held to empower the non-occupancy ryot to make the other improvements enumerated in section 87, after giving the landlord notice. It may perhaps be desirable to vest these rights in the non-occupancy ryot more clearly than has been done in the Bill. In section 90(2) a simple notice was substituted for a request in writing at the Dacca Conference.

75. There is little chance in Backergunge district of landlords succeeding in suppressing existing rights of ryots; but I have no doubt section 96 of the Bill will be abused in many parts of Bengal, so long as a wide difference in rates of rent is maintained between occupancy and non-occupancy ryots. Section 96, as well as other sections of the law, will be strained to the utmost, as I have stated in paragraph 60, to prevent the growth of occupancy rights. The one remedy, therefore, which is likely to prevent these abuses is to abolish all distinction between occupancy and non-occupancy rents, and to fix a maximum limit to which such rent may be enhanced.

This was the opinion of the officers present at the Dacca Conference.

76. I wish to quote in this connection a remark which Baboo Dina Bandhu Sen has made with regard to relinquishment of under-tenures. He says "The present law provides no rule of abandonment of an under-tenure. The High Court has also held that under-tenures cannot be relinquished. In certain cases which have come to my knowledge, the want of such a rule has affected with great harshness upon the under-tenants. I therefore believe, if the Bill would provide for the relinquishment of under-tenures, under special circumstances, that would be doing a great good to the people of Backergunge."

77. In measurements it will be enough if landlords are empowered to measure the external boundaries of only lakhiraj lands. The use of the officially determined local pole, in the first instance, and subsequent conversion into English measure would be preferable, I think. Baboo Dina Bandhu Sen informs me that he has often heard tenants in civil suits complain that they could not check the amins, because they could not understand what the ameen did on the field. Mr. Reily, however, states that in this district the ryots find no difficulty to follow the ameen, and recommends that measurement according to the English measure should be continued.

This was the opinion of the officers at the Conference at Dacca.

78. The provisions of sections 102 to 109 will be extremely beneficial to this district. There is no more fruitful source of disputes and of breaches of the peace than disputes among co-sharers. One of the co-sharers then begins to take the ryots under his zimba, or himself goes under the zimba of some powerful zemindar, and endless complications then arise, which frequently threaten breach of the peace. I am quite sure those sections will not only prove very beneficial for the peace of the district, but will also be appreciated by the zemindars of the district themselves. Many families will be saved from dissensions and ruin.

The provisions were approved at the Conference at Dacca, but it was resolved that in case of applications from private owners, co-sharers owning at least half the estate must apply before the provisions of this chapter can be applied to any estate.

CHAPTER X.

Record of Rights and Settlement of Rents.

79. This chapter is one of very great importance, and is likely to prove extremely beneficial in many parts of Eastern Bengal, where ill feeling exists and disputes occur between landlords and tenants on the question of rent. At the present moment there are portions of this district where such disputes are frequent, and where a record of rights and a settlement of rents would be highly beneficial in allaying ill-feeling and restoring peace. Parties to the dispute do not always go to the Civil suit, as each party tries to avoid the burden of proof, and in many instances the dispute concerns such a large area, and concerns so many ryots, that nothing but a detailed local enquiry, such as is contemplated in this chapter, can afford a satisfactory solution. As a means of settling disputes and restoring good feeling in many disturbed parts of Bengal; as a simple method of giving redress to landlords who, either on account of having purchased new estates, or on account of the dishonesty of their servants, are unable to prove their claim to fair and equitable rents from their ryots; and lastly as an equally simple and

efficacious means of affording relief to ryots in places where they are rack-rented and impoverished, this chapter of the revised Rent Bill is likely to prove extremely beneficial to the country.

80. I would make a slight alteration in section 110, sub-section (2), clause (*a*). I would add the following words in the end of that clause—" or where there are special circumstances relating to the condition of the tenants such as make it desirable, in the opinion of the Local Government, to pass an order under this section "

This was not agreed to at the Conference at Dacca. Under section 110 (1) the Local Government is empowered to take action *in any case* with the sanction of the Governor-General, and this was held sufficient.

81. My reason for making this addition is obvious. There may be places where the tenants are too ignorant to apply, or too poor to pay the expenses required under the section as it now stands, and it is of the utmost importance that Government should reserve the right to interfere of its own motion in such cases.

82. The first portion of this chapter relates only to a record of rights. The second portion includes, in addition, " the settlement of all such rents of occupancy tenants and tenure-holders holding otherwise than at fixed rates, as either the landlord or the tenant may apply to have settled" (Select Committee's report). This being so, it would be simpler if all questions of rent were excluded altogether when the procedure for a record of rights only was adopted. Clauses (*e*), (*f*), and (*g*) of section 111 should therefore be omitted.

This was not agreed to at the Conference at Dacca, and it was resolved that the clauses should stand. They empower the officer simply to record existing rents when he is making a record of rights, while he can alter and settle rents when he is making a settlement of rents.

83. It has been provided that the decisions of the officer making a record of rights will be appealable, and that the undisputed entries will only be presumed to be correct until the contrary is proved. I entirely approve of these provisions. Mistakes are frequently made by revenue officers employed in making settlements of Government estates, and the officer making a record of rights is equally liable to make such mistakes. It is desirable that the parties affected by his proceeding should in every case have a right of appeal. On this point I entirely agree with the concluding remark in paragraph 73 of the Select Committee's report.

It was resolved, however, at the Dacca Conference that when a ryot was present when the entry regarding him was made, and did not dispute it, he shall not be allowed to prove the contrary afterwards under section 116 (2).

84. I do not quite understand the reasons for which it has been provided that an officer making a " settlement of rents " will settle only the rents paid by tenure-holders and occupancy ryots. It seems to me that it would be better to empower him to record or settle all rents paid by tenants of all classes in the estate, and thus to make a complete rent-roll of the estate.

85. I have recommended the fixing of maximum limits of rent in paragraphs 44 to 50, and in paragraph 57 of this report. If these recommendations find acceptance, I would insert a clause after clause 5, section 118, that the officer will in no case fix the rent higher than one-fifth the gross produce in the case of ryots, and of one-fourth the gross produce in the case of under-ryots.

86. It would be desirable, as has been suggested in the letter of the Government of India, that officers acting under this chapter should be expressly invested with the power of a Civil Court for the purpose of summoning, affirming, and examining witnesses and passing necessary orders.

CHAPTER XI.

Table of Rates.

87. I think it will be ultimately decided to omit this chapter altogether. The help which a landlord really requires when he is unable to get any reasonable rent from his ryots will be given to him under the provisions of the previous chapter; and, as far as I can judge, zemindars will invariably apply for help under that chapter to have a rent-roll prepared than to have a table of rates prepared. The distinctions between the different qualities of lands are by no means marked, and the rent varies even of lands of the same quality. Under such circumstances, the preparation of a table of rates would be extremely difficult; and when it is prepared, it will be next to useless for the landlord. The chapter, therefore, if enacted into law, will be a dead letter, and it would be better therefore to abandon it altogether.

CHAPTER XII.

Record of Proprietors' Private Lands.

88. I have no remarks to make under this chapter. I am not aware of any class of proprietors' private land not included in the list given in section 153 (1) of the Bill.

CHAPTER XIII.

Distraint.

89. I am very strongly of opinion that " if distraint is to be maintained at all, the process can no longer be left to the unsupervised action of the zemindars' servants." Private

distraint is so constantly and almost invariably abused, and in this district has so frequently been the occasion of breach of the peace, that it cannot be allowed to continue in the statute book. When the right is exercised, the chances are, nine to one, that it is exercised not with the legitimate object of realizing rent, but with the object of harassing the ryot to compell him to comply some other demand with which he is not bound legally to comply.

90. I am not singular in my opinion in this respect. Baboo Dina Bandhu Sen, who as pleader has acted oftener for zemindars than for ryots, and who has gained a thorough and practical experience of the working of the law from many years' observation, states:—"In nearly all the cases of distraint which have come to my notice as a pleader in this district, I have observed that the law has been abused." This is the opinion of most persons that I have consulted, but Mr. Reily is of a different opinion, and maintains that the right of private distraint helps zemindars in getting their rents expeditiously, and should be retained.

I have received abundant and almost unanimous testimony on this point. The First Munsif of Burrisal says that 95 per cent. of the applications for distraint made to him within the last 11 years of his service were made solely to compel ryots to submit to unreasonable demands. He says, "Two of the biggest zemindars in the district, Baboo Kali Kissen Tagore and Raja Satyananda Ghosal, who are known to be very good landlords, have scarcely any occasion to avail themselves of the law of distraint." It is the oppressive zemindars only who avail themselves of the law to harass ryots. The Munsif, therefore, recommends the entire abolition of the law of distraint, which, he says, will not create any real difficulty in the realization of rent. He believes that in Bengal much greater oppression is committed by distraint through Court than by private distraint, because landlords, when bent on oppression, try to give their proceedings a semblance of legality.

It was resolved at the divisional Conference at Dacca to let the provisions of the present Bill stand as they are.

91. Private distraint should, in my opinion, be abolished altogether. The remarks made above apply with only somewhat less force to distraints under order of Courts. Distraints are not applied for to realize rents, but to harass ryots, and make them comply with other demands with which the ryot is not bound to comply. This was the opinion of most of the gentlemen who attended a meeting which I convened in Burrisal to discuss the Rent Bill; and all the gentlemen, except a few zemindars, agreed that there should be a special provision in the law that an application for distraint should not be complied with by Courts unless satisfied *primâ facie* that there is no other means of realizing rent. My opinion is the same. Private distraint should be abolished altogether; and if the remedy of distraint under orders of the Court be retained, there should be a special proviso that no order to distrain shall be passed unless the Court is satisfied *primâ facie* that there is no other measure for realizing rent.

CHAPTERS XIV AND XV.

Judicial Procedure and Sale for Arrears.

92. I regret that my absolute want of all experience in rent-suits prevents me from giving any opinion of any value on the question of procedure as laid down in these two chapters. Ryots in this district do not generally withhold rents unless there is a dispute about the rate of rent, or some similar matter. Respectable zemindars have informed me that they have generally and without difficulty realized 12 to 14 annas of the rent due within the year, and that the arrears are mostly paid up in the following year. The sub-division of Dakhin Shahbazpore, however, is an exception. Ryots there will often withhold rents, when they can pay, in order to utilise the money in other ways, and to get a profit or interest on it, and the zemindars of that sub-division find much difficulty in realizing rents. An efficacious procedure ought to be provided for realizing rents from such ryots, and I believe section 163 of the revised Bill, and the provisions of Chapter XV, provide a very prompt and efficacious remedy.

93. The provisions of sections 163, 164, 168, 171, 175, 177, 185, and 186 seem to be fair and equitable.

94. Mr. Reily makes some remarks about the inconvenience and difficulty of co-sharers in realizing rent which deserve consideration. I therefore quote them in full:—

"The Rent law, Act VIII of 1869, has imposed great inconvenience as regards estates in which there are co-sharers. I would specially refer to section 64 of that Act. On a decree for arrears of rent having been obtained, the execution in favour of a sharer in an undivided estate 'shall not issue against the defaulting tenure until after the sale of the defaulter's moveable property.' This special exception in favour of this class of defaulters is the cause of much delay, and is practically useless, since the defaulter removes all moveable properties, and takes advantage of the law to harass the landholder by setting up relatives to claim any articles he may succeed in attaching.

"Further, when the tenure is brought to sale, the law enjoins that such sale shall have the same effect 'as the sale of any immoveable property sold in execution of a decree *not being for arrears of rent.*' That is, the landholder, if he buys it in for the arrears which are due to him, cannot eject the tenure-holder, and is liable for all claims and mortgages for *debt* of the defaulter; also claims by minors or other parties. Further, the sale proceeds are divided between the landholder (who probably has been to the cost of obtaining the decree and executing the same) and all other claimants. Thus affording opportunity for the defaulter to set up fraudulent claimants, who generally obtain decrees by the intentional default of the tenure-holder. Also defaulters of rent in co-sharer estates take advantage of this provision of the law and purposely incur debts. Several instances can be adduced of landholders in co-sharer estates being deprived of rents justly due to them by the provisions of this law, which in fact acts as a bar against the realization of rent. This great hardship should be remedied. A decree for rent

should take precedence over every other claim. No exception should be made for the accidental or fortuitous circumstance that the tenure is situated in a joint estate, held by several co-sharers, especially when the tenure itself is put up to sale, not the portion falling within the share of the decree-holder, who (should he purchase the tenures) is liable for the rent of the tenure to his co-sharers in the proportion of their respective shares. This matter is deserving of the serious consideration of the Legislature, as the provision of the law referred to has done more to depreciate the value of the landed property than any other procedure of the Courts. There are comparatively very few 16-anna or sole proprietors in the district. With the lapse of time the number of families increase, and estates are divided and sub-divided into shares between the heirs. In the course of time still fewer estates will be held *sola ani* or by a single proprietor. The subject therefore demands the immediate and serious consideration of the Government. I would here remark that the registering separate accounts of shares in the Collector's office, and selling portions of estates under Acts XI of 1859 and VII of 1876, foster and encourage the system of sub-dividing estates. On glancing over the sale notices published in the *Calcutta Gazette* it will be observed that nearly every estate advertised for sale on account of arrears of revenue is a share of an estate for which separate accounts have been opened. The tenants in such co-sharer's estates labour under the great hardship of having to pay their rent in fractional shares to the agents of each share-holder. To them it will be a boon if the tenure is sold in execution of a rent decree, and passes into the hands of a *single* share-holder, to whom alone they will have to pay their rents."

95. Mr. Reily also represents the inconvenience to which the landlord is put in realizing his rent under the rules framed by the High Court. I have heard complaints from other zemindars also on this subject, and I think the remarks of Mr. Reily deserve careful consideration, and I therefore quote them :—

"Rule 2 enjoins that when immoveable property is under attachment in execution of a decree, the party applying for the order of sale, or if more than one, then one of them shall, before he makes his application, cause search to be made in the office or offices of the Registrar or Sub-Registrars of Deeds, within whose circle or circles the property is situate, with a view to ascertain whether such property is subject to any and, if so, what encumbrances. Every application for an order for the sale of property in execution, whether moveable or immoveable, shall be supported by an affidavit to be made by the application, or by some other person acquainted with the facts of the case; and to be verified in the manner prescribed by the Code for the verification of plaints, which affidavit shall state everything known or believed by the deponent to exist, which relates to the nature or affects the value of the property to be sold.

"I beg to point out, under section 18 of the Registration Act, the registration of immoveable property valued at less than Rs. 100 is declared optional: many persons evade such re-registration. The registration of wills is also optional.

"Under section 57 of the Registration Act, books Nos. I and II, and the indexes relating to book No., I. are opened to inspection by any person applying to inspect the same; but not book No. III without payment of a fee.

"Again, the indexes from the Rural Sub-Registrars are not submitted to the Registrar at the sub-divisional head-quarters for *weeks*—sometimes after the lapse of *months*. That officer includes these indexes in his general index at the end of the year. When a new book is required during the year, the first index book is sent, and the second is retained until it is finished.

"In cases in which a document relates to several proprietors, each lying within the jurisdiction of a different registry office, it may be registered at any one of the said offices (*vide* section 28), and a memorandum shall be sent of such Registrar by the officer registering the document to all the offices within the jurisdiction in which the property or properties or any portion of them is situated. Often a month or more elapses before such memorandum is received by all the officers concerned.

"It will thus be seen that before a decree-holder can discover if the property in which he is interested is subject to any and, if so, to what 'encumbrances' he must proceed first to the Rural Sub-Registrar's office; then to the divisional office; then to the sudder office Generally judgment-debtors begin to create encumbrances within the year in which the decree is obtained, and the decree-holder, before he can make affidavit that there are no encumbrances, must visit all three offices. Consider for a moment the expense, waste of time, the harassment attending these visits, and the searches of the several registers, not to mention the well-known "insolence of office." The cost will absolutely debar execution of decrees for sum not exceeding Rs. 20. The majority of decrees for arrears of rent seldom exceed that sum."

CHAPTER XVI.

Summary Sale for Arrears.

96. I have no remarks to make under this chapter. Baboo Chundra Nath Mahalanavis and some other zemindars would like to see this patni sale procedure applied for the realization of rents by zemindars. I also quote the opinion on this subject of Mr. Reily

as representing another suggestion made on behalf of zemindars for creating facilities for realizing rent :—

"To expedite the trial of rent-suit, the most effectual measure will be—*first*, to increase the number of Munsifs empowered to try rent suit according to the wants of a district.

"*Second*—In cases where there are decrees for rents of *previous* years, to bring the tenure for sale on the affidavit of the tehsildar or collecting agent, that the rent or instalment (as the case may be) has not been paid for the current year.

"Also the court-fees in rent suits should be reduced to half the amount in civil suits, so as to reduce the costs for defaulting tenants."

My opinion is that the facilities given in Chapters XIV and XV of the Bill will be found practically sufficient, and that it would be risky to go further in this direction.

CHAPTER XVII.

Contract and Custom.

97. *Section* 210—Enumerates the matters in which the provisions of the Act shall take effect, notwithstanding any contract to the contrary. If the recommendations I have made for fixing maximum limits of rents from ryots and under-ryots find acceptance, that rule should be added to this list as a matter which should take effect, notwithstanding any contract to the contrary.

Interest at the rate of 75 per cent., and sometimes 150 per cent. per annum, on arrears of rent is sometimes contracted for. It may be thought necessary to legislate against such monstrous contracts. It was resolved at the Dacca Conference to provide against the power of contracting for interest on arrears of rent at a rate over 12 per cent., simple interest.

CHAPTER XVIII.

Limitation.

98. I have no remarks to make under this chapter.

CHAPTER XIX.

Supplemental.

99. With regard to section 227, the only kind of pasturage which is peculiar to this district is the grazing of buffaloes in the churs in the great rivers, which are submerged in high floods, and where no crops can grow. Large herds of buffaloes are sent there in seasons when they are not required for cultivation. The provisions of section 227 sufficiently meets the requirement of this case.

100. These are all the remarks that I have to make on the revised Rent Bill. It only remains now to reply to the questions raised in the initial paragraphs of the Government of India's letter No. 784, dated 5th May 1884, and forwarded to me with your No. 154G, dated 23rd May 1884. These questions have been noticed and commented upon in the Government of Bengal's letter No. 3T.—R., dated 24th May 1884. I will shortly reply to these questions in a separate communication.

With regard to the last of these questions, it was resolved at the Dacca Conference that not only semi-tenures, but ryoti holdings, like the jotes of Mymensingh and Backergunge, which are now legally recognized as saleable, should be exempted from the presumption clauses, if those clauses are retained in the Bill.

(*N. B.*—Mr. Dutt's separate communication has not been submitted to the Government of Bengal. His views are doubtless duly represented in the report of the Dacca Conference.

A. P. M.

W. J.—Reg. No. 6111C—327—30.8.84.

No. 1865-42G, dated Mymensingh, the 27th October 1884.

From—E. G. GLAZIER, Esq., Collector of Mymensingh,
To—The Secretary to the Government of Bengal, Revenue Department.

I HAVE the honour to send, for the information of Government, a copy of some notes I made for the Dacca Conference on the Tenancy Bill, in order that the Lieutenant-Governor may, if His Honor judges fit, forward them for the consideration of the Select Committee.

2. I would especially urge three points—

(1) The protection of the under-ryot by giving him a right of occupancy against his immediate landlord (paragraphs 2 to 5).

(2) Giving the revenue authorities power to take over the management of an estate when a settlement of rent is made owing to disputes between landlord and tenants (paragraphs 15 to 17).

(3) Extending the rule to cases when the levy of illegal cesses is rampant (paragraphs 18 to 21.)

No. 1005—42G, dated Mymensingh, the 14th July 1884.

From—E. G. GLAZIER, Esq., Collector of Mymensingh,
To—The Commissioner of the Dacca Division.

ON receipt of your No. 187 of 4th ultimo, I have the honour to submit a report on the revised Rent Bill as a contribution towards the discussion at the Conference. I shall deal specially with a few of the more important points, relegating to an appendix the general remarks on the several matters referred to in the Government letter.

2. *Under-ryots.*—The protection of the actual cultivator, or practically the under-ryot, seems to be by far the most important point to be secured. That this class specially needs protection, no party denies. In paragraph 4 of the Government of Bengal's letter, it is stated:—"From the earliest discussions of the question, it has been accepted that if by any definition or legal provision the limitation of the occupancy right to actual cultivators could be secured, most, if not all, of the objections to the proposal" (*i.e.* of free sale) "would be removed." It is for this reason that the plan set forth in section 37 has been devised, mainly with a view to be a check on money-lenders. But it is not against money-lenders only, or even chiefly, that the actual cultivator needs protection. The jotdar or occupancy holder in the natural course of things sub-lets his lands and gets ryots under him, and it is an acknowledged fact that small landlords are harder on their ryots than the larger landholders, and any system which aims at rendering more secure the position of the class of ryots who grow up into small landlords, while the lower tenantry are left at the mercy of the law of supply and demand, must tend in the nature of things to foster a class of serfs of the soil, ground to the earth, and discontented with their lot.

3. No settlement can be accepted as statesmanlike or lasting which does not afford adequate protection to every class of ryot. Now, too, is the time to put the matter on a satisfactory basis. The zemindars are not unwilling to help in the process of securing the actual cultivator against the middlemen, and the ryot-landlord has not yet a sufficiently strong position to offer any resistance to whatever proposals it may be judged expedient to enact; but if the present opportunity is neglected, it will be a much harder task a generation hence to interfere on behalf of the cultivators oppressed and rack-rented by a swarm of small landlords.

4. Section 37 has been objected to as not being very effective for the purpose for which it is put forward, and on the other hand as rather encouraging sub-letting than checking it, and it is certainly liable in some measure to both charges. I consider a much more radical remedy is required, and I propose the following:—

(*a*). That when an occupancy ryot lets any part of his holding, the under-ryot shall at once acquire an occupany right in the land held by him good as againts his immediate landlord.

(*b*). That if a holding with occupancy right is transferred by private or public sale or otherwise, the purchaser shall acquire the holding subject to the rights of the under-ryot as above declared, the only exception being that, if in a sale for its own arrears a holding does not realize sufficient to pay the decree, it may then be sold free from the incumbrances created by the previous holder.

(*c*). If the zemindar or superior landlord quashes the occupancy right of the sub-letting ryot by becoming possessed of the holding in any way by purchase, abandonment or otherwise, the right of occupancy shall pass fully to any under-ryots who are settled on the holding, who then become ryots of the superior landlord for the lands held by them.

(*d*). If a ryot with right of occupancy sub-lets half his holding, the zemindar may compel its registration as a sub-let holding, and when so registered, the holding shall become liable to sale for arrears in the same way as tenures, but shall not acquire any other of the incidents of a tenure, except that of freedom from the liability to distraint, and the under-ryots shall become ryots with full rights of occupancy.

5. It will be observed that the rights of the zemindar are sufficiently secured by my plan. He retains his power of distraint unless by his own action he compels the registration of a sub-let holding, and his rent is secured by the sale of the holding without incumbrances to another ryot if the amount due cannot be realized without doing so. That being so, I can see no objection to granting the right of occupancy to the actual cultivator subject to the above restrictions, and in cases where there are several grades of ryots, each under-ryot can be allowed the right of occupancy as against his immediate landlord.

6. The rules suggested above will protect the under-ryot from ejectment in the majority of cases and from enhancement, except on the same conditions as occupancy ryots; but some such provisions as those in chapter VII will still be necessary to prevent the ryot-landlord from recovering an excessive initial rent. The provisions of that chapter, however, are faulty, as Krishta Das Pal has pointed out. Where there are many grades of middlemen, and each can enhance to the limit of half as much again as his own rent, the final result would be alarming—1, $1\frac{1}{2}$, $2\frac{1}{4}$, $3\frac{3}{8}$, $5\frac{1}{16}$, and so on. I would suggest that the limit of the rent paid by the actual cultivator should be 50 per cent. advance on the rent paid by the occupancy ryot, and let the middlemen or middle ryots settle among themselves how to apportion their respective shares.

7. *Non-occupancy ryots*—The position of the non-occupancy ryot, as left by the amended Bill, is very unsatisfactory. He has no sufficient security against ejectment, and no protection for his improvements. He must wait for the statutory term of 12 years before his position is secure, and the zemindar will not allow him to wait so long. I think that the provisions relating to compensation for disturbance, and for the value of improvements, should be restored.

8. The position of the non-occupancy ryot may be strengthened by further developing section 217 on the question of custom. The jotdari right of Rungpore, which has to some extent forced recognition from the courts, is doubtless the old customary tenant-right of Bengal, which may be said still to exist wherever sales of holdings from ryot to ryot are in vogue. Our registration records can show how far this practice prevails. It is the custom all over the Rajshahye Division, and I suppose also all over the Dacca Division, and probably elsewhere too. In these sales no mention is made of the seller having the statutory right of occupancy; he recites that he is "satyavan" or "dekhilkar," or that he has been in possession from a long term, or simply that the jote is written in his name "amar name jote lekha jai." According to this custom a jotdar may at any time sell his jote, and yet it would seem that by the present law a zemindar can eject a purchaser who has paid money for his property, and has put buildings on it, or has otherwise improved it, if he or his seller has not held if for twelve years. I would enact that, whenever in any district the custom exists of selling holdings by private contract or in execution of decree, non-occupancy ryots shall not be ejected on account of arrears, but the holding shall be sold by public auction, and any balance remaining after satisfying the decree shall belong to the ryot.

9. The question of enhancement of the non-occupancy ryot's rent will be further considered in connection with the occupancy ryot's position in this respect.

10. *Occupancy ryots.*—I shall make a few observations on the question of enhancement. Krishta Das Pal in his dissent states "that the alterations made by the Committee will tend more to maintain the *status quo* than to secure justice to the landlord." If we can maintain the *status quo*, we shall secure some *justice to the ryot*, and at the same time preserve the peace of the country. It is this constant enhancement and fear of worse in the future that unsettles the agricultural community and fosters agrarian disturbances. When the zemindar's advocate talks of "justice to the landlord" as calling for an easy method of enhancement, it is as well to recur to first principles, and to point out that enhancement of rent formed no part of the permanent settlement or the settled law of the country.

11. I make bold to quote from my notes on Rungpore (volume I, page 28) a ruling of 1780 made by the Committee of Revenue:—"The Committee adverting to the nature of a zemindar's office and the deed by which he is vested with the superintendence and collection of the revenues of a zemindari, are of opinion that he does not derive a right from either of making a hustabood of a zemindari by measurement, or of changing the ancient mode or rates of collecting the revenue without the previous permission of Government." This precedent is of value, as it had reference to the large estate of Baherbund in Rungpore seven years after the zemindar obtained a permanent settlement of it.

12. The "prevailing rate" should be struck out as a ground of enhancement. The Government of India and the Government of Bengal have both shewn the objections to which it is open, and Mr. Reynolds also in his dissent proposes to abandon it. The fact that rent can be enhanced to the limit of 50 per cent. under its operation is especially objectionable.

13. With regard to the question of fixing a limit for rent, based on the value of the gross produce, there are great difficulties in the way, and the Select Committees have now left this provision out entirely. There are two special objections to it—1st, that one standard will not suit the varying circumstances of different parts of the country; and secondly, that the zemindars will endeavour to work all rents up to the maximum.

14. I do not think any standard of the kind can safely be fixed, except there is left a wide margin in the standard itself, and the Government has full discretion in applying it to any area under some such rules as the following:—

(*a*). A standard for rent in any district, local area, or estate, may be fixed by the Government at any rate between the limits of one-fifth and one-twelfth of the value of the gross produce.

(*b*). The Government shall fix such standard after such local enquiry as it may judge expedient in connection with operations for the settlement of rent or otherwise.

(*c*). Such standard when fixed shall not affect the initial rent at which a ryot may take a holding, but shall avail in any proceedings for enhancement of rent.

(*d*). The standard shall apply to the rents of all ryots, occupancy or non-occupancy.

15. *Record of right and settlement of rents.*—This is a very useful chapter, but it wants a little extension. Section 110 (2) (*b*) gives the Local Government power to order a record of rights in any case where there is a dispute between tenants and landlords, and section 117(2)(*a*) extends that power to making a settlement of rents. It should be enacted that in such a case the Court of Wards may take the management of the estate in which the dispute exists for a period of, say, from 5 to 10 years.

16. The Revenue Officer can carry out his settlement proceedings much more satisfactorily if the estate is taken out of the zemindar's hands for the time being, and it is also desirable that, when the record and settlement have been made, measures should be taken to put the recorded rights and the new settlement efficiently in force. It is to be feared that in many instances the zemindars will ignore the whole arrangement and go on as before. It is one thing to pass a law, and another to ensure its working. It has been found out in this district, and I may say in others also, that Act X has practically been a dead letter, so far as any protection has been afforded to the ryots. The systematic oppression of the ryots, and ignoring of many of their rights, practised by a number of zemindars, calls for strong executive action.

17. At present the Government officers have to employ their time as Magistrates in trying to keep the peace and patching up disputes, but without any real power to make their advice effective. It would be much better, in cases of serious dispute, if the Collector could effectually interfere by taking over the estate, make the needful settlement of disputed matters, and set the new arrangement at work for a term of years so as to give it a chance of permanency. The ryots would willingly submit to the Collector's management, and the zemindars could have no just cause of complaint if their estates were taken out of their hands for a time when they had failed in their duty as zemindars, and had not been able to keep the peace between themselves and their ryots. It might not be necessary to take many estates in charge. To take in hand a few of the worst cases would probably act as an inducement to the rest to improve their management.

18. *Illegal cesses and exactions of rent.*—In connection with the question of taking over the management of estates in cases of serious disputes between landlord and tenants should be considered this old matter of illegal exactions. The abuse has been persisted in for more than a century in spite of repeated prohibitions. In the instructions to supervisors issued in 1769, it is stated that "the truth cannot be denied that the poor and industrious tenant is teased by his zemindar or collector for every extravagance that avarice, ambition, pride, vanity, or intemperance lead him into, over and above what is generally deemed the established rent of his lands. If he is to be married, a child born, honours conferred, luxury indulged, and nuzzuranas or fines exacted, even for his out misconduct, all must be paid by the ryot; and what heightens the distressful scene, the more opulent, who can better obtain redress for imposition, escape, while the weaker are obliged to submit."

19. This goes on still. In 1876, when making enquiries into this subject in Rungpore, the ryots told me that on a zemindar's marriage, if his mother dies, if a son is born, if he buys an elephant or a horse, or on any like occasion, a cess is forthwith levied. Last year in Pubna I ascertained that a zemindar who had been well spoken of for making a contribution towards schools made a good thing of it, as he levied an educational cess to a much greater amount than he had paid. As a general rule the whole of the Road and Public Works Cess is taken from the ryots, and when an ijarah is given, the exaction by the ijaradar of a cess of a certain number of annas in the rupee is of ordinary occurrence.

20. These facts have been often repeated and are well known, but it is necessary to refer to them again and again till something effectual is done to remedy them. The provisions of sections 85 and 86 are well enough in their way, but something more is wanted.

21. The Collector should have the power to make enquiries into these cases and award the penalties in a summary way instead of leaving it to the ryot to bring a suit in court which he never dare do. Also in bad cases, when the evil is rampant, the Court of Wards should be empowered to take over the estate for a term of years under the provisions of Chapter X, as suggested in my paragraphs 15 to 17.

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C. E G.—Reg. No. 8338C—327—31 10-84.

No. 1900T—R, dated Darjeeling, the 13th September 1884.

From—A. P. MacDonnell, Esq., Secy. to the Govt. of Bengal, Revenue Dept.,
To—The Commissioner of the Rajshahye Division.

The Lieutenant-Governor understands that in convening the Conference of Collectors on the Tenancy Bill, you took occasion to issue to them a circular letter of instructions and comments upon the Bill. It is desirable that the Government should be acquainted with the terms of the circular letter referred to, and I am therefore, by order of the Lieutenant-Governor, to request that you will submit a copy of the letter for the information of Government. As time is an object, I am to suggest to you that you will facilitate matters by forwarding the file copy of the letter in question to be returned to you after perusal by His Honour.

H. P.—Reg No. 1025T—17-9-84.

No. 2105T.—R, dated Darjeeling, the 3rd October 1884.

From—A. P. MacDonnell, Esq, Secretary to the Government of Bengal,
To—The Secretary to the Government of India, Legislative Department.

I have already, at His Honor the Lieutenant-Governor's desire, brought unofficially to the notice of the Government of India the fact that the Commissioner of the Rajshahye Division, when convening the conference of Collectors of his Division on the Tenancy Bill, took occasion to issue to them a circular, letter dated 7th June, commenting upon the proposed measure. I have also stated that, although some of Lord Ulick Browne's comments, especially those in his sixth paragraph, were likely, in Mr. Rivers Thompson's opinion, to convey a wrong impression of the motives and policy of Government, besides having calculated to prejudge the issues which the Collectors were called on to consider, still the Lieutenant-Governor in order to avoid all appearance of interfering with full freedom of discussion, took no notice at the time of the circular in question. When, however, the report of the Rajshahye conference had been submitted to Government, Mr. Rivers Thompson thought it desirable to bring the circular to the notice of the Government of India, in order that it might be taken into consideration in connection with the Rajshahye Conference Report. The Government of India now suggest that the circular should be published with the other papers submitted with my letter of the 15th September last; and the Lieutenant-Governor, accepting that suggestion, requests that this explanatory letter, with Lord Ulick Browne's circular of the 7th June, may be prefixed to the report of the Rajshahye Conference.

W. J.—Reg. No. 7477C—327—8-10-84.

THE BENGAL TENANCY BILL.

Circular No. 221 Rot., dated Darjeeling, the 7th June 1884.

From—LORD H. ULICK BROWNE, Commissioner of the Rajshahye Division,
To—The Collector / Deputy Commissioner of

[ADDRESSED to the district officers of this Division with reference to the following papers relating to the Bengal Tenancy Bill:—

Bengal Government's circular No. 2T—R, dated 16th May 1884.
Ditto ditto „ 3T—R, dated 24th „ „
Government of India's letter No. 784, dated 5th May 1884.
} Copies of these three have been sent to district officers direct.

Revised Bengal Tenancy Bill as published in the *Gazette of India* of 29th March 1884.

Report of the Select Committee of the Legislative Council of India on the revised Bill published in the *Gazette of India* of 29th March 1884.

Dissents of members of the Select Committee.]

GOVERNMENT have called on Commissioners and district officers to consider the revised Bill and the other papers, and to have certain enquiries made, if any, when necessary. After this, Commissioners are to hold a conference with district officers and to embody the views, opinions, and information collected in a single report, in order to diminish correspondence as much as possible. The Commissioners' reports are to reach Government not later than 12th August, and thus the Conference (which will take place at Darjeeling) must be held towards the end of July.

2. It occurs to me that the work of the Conference may be considerably reduced by my ascertaining beforehand how the facts stand as regards local peculiarities, &c., and also ascertaining the opinions of the district officers on some points. For instance, if there are, as I believe will be found to be the case, no special local circumstances in this Division affecting some of the proposals, it will be unnecessary for us to discuss the proposals on that particular score, though we may have to do so when other objections offer themselves.

Again, as regards some of the simpler points to be considered, if we all agree, they need not be discussed. Taking this view, I issue the present circular in the hope that in regard to most points I may receive information or opinions from the district officers by the 30th* instant, if not sooner. On receiving them, I propose, so to speak, to strain off matters in which there is either unanimity or a great preponderance of opinion without any special and unforeseen reasons for dissent, and where there are differences of a decided nature, and whenever opinions are held on any new or unusual or special grounds, to let other district officers know those grounds in order that such points may be considered by the light of them before the Conference.

* In fixing this date allowance has been made for action having been taken on receipt of the Government circular of 16th and 24th May.

In the same first set of reports I should like to have any special suggestions or remarks of the district officers on any points not dealt with in the circulars of Governments, or in the report and dissents of the Select Committee, if any such occur to the district officers.

3. I am in hopes that with one special exception, in regard to which Government wish particular enquiries to be made to whatever extent may be possible in the limited period available, district officers will be able to let me have information and opinions on remaining points by 10th July, so that more ground may be cleared before we meet; but, if possible, I should of course prefer that (omitting the special exception) all may be included in the first reports to be submitted by the last day of this month.

4. The time allowed us being so short, I hope no district officer will think of sending the papers to any Sub-Divisional Officer, or other officer, or other person, for a general report on them; and as regards public bodies, the Rajshahye Association is obviously the only one in this Division that should be consulted on this occasion. It would be a waste of time to consult Road Cess Committees and Municipal Commissioners *as such*, though individual members may be in a position to give useful information on a particular point. I must request that no enclosures be sent to me with the district officers' reports, *i.e.*, that any suggestions from others be embodied in these reports. I also hope that brevity will be earnestly studied, as each officer can, besides bringing to the Conference the draft of his

report to me, also bring notes of any lengthy arguments, &c., with which he may wish to support more fully anything of importance at the Conference, if such support seems necessary.

5. In regard to several provisions of the Bill, or suggestions of the Bengal Government for altering it, enquiries are made by the Government whether any local peculiarities exist in any districts which would interfere with the application of the provision or the adoption of the suggestion. It is obvious that there is no time to make detailed and prolonged enquiries, and the best course to adopt in cases where the district officer has insufficient personal knowledge of the subject already will be to select a few individuals, whether munsifs, zemindars, zemindari agents, sub-divisional officers, Deputy Collectors, or others, who, from what has come before them in the discharge of their duties or business, or their means of enquiring easily and quickly from neighbours, &c., are the most likely to be able to supply at once, or obtain with the least possible delay, the required information. Then, without sending the papers generally to such persons, district officers might send them questions embodying the points in regard to which Government require. Speaking generally, I am inclined to think that the only local peculiarity in the Regulation parts of this Division that is of real importance as regards our present purpose is the long-established custom under which the jotes of Rungpore and of the Regulation part of Julpigoree, which formerly belonged to Rungpore, are transferable at the will of the jotedar. If, however, there are others of a character to interfere with present proposals, the district officers will either know of them or can now ascertain their existence by applying in the right direction to a few individuals.

6 District officers will doubtless remember that there is no use in repeating at length general arguments such as that the great main principles of the Bill are contrary to the solemn pledge made in the Permanent Settlement Regulations; that such important changes are impolitic, unnecessary, or unjustifiable in Bengal Proper at any rate; that they will create mischief and bad feeling, and so forth. The present Government have turned a deaf ear to all such representations and arguments, and, in order to show beyond all doubt the determination not to be influenced by them, went so far as to give in the Legislative Council a meaning to the word "proprietor" that was previously unknown in connection with the English language. But though it is desirable to avoid repeating such arguments at length, it is equally desirable that officers, who think the passing of such a Bill would be a stain on the British administration of India, and that it is unfair, unjust, impolitic, or uncalled for, should not mislead Government into thinking that such officers have abandoned those views, as the history of the expression of opinions on the different Bills that have been supported or proposed by Government shows that some modifications have been effected by the representation of such views, while there are, at the present moment, grounds for thinking further modifications may yet be effected. When the first two Bills, the predecessors of the one now under consideration, were framed, the zemindars showed astonishing supineness, and failed to set forth their arguments against the Bills. It was doubtless owing to this that a great majority of Commissioners and Collectors considered those Bills just as if the Government had a *tabula rasa* to work upon, as if no one in the country had any right whatever in the land, and as if it rested entirely and beyond a doubt with Government to do what they happened to think best. But by the time the present Bill was drafted in its original form, the zemindars had set forth and published their side of the question in considerable detail and with much force, the consequence being that the last reports of Commissioners and district officers differed in many instances from their first reports, which were written without an opportunity of knowing what there was to be said against the Bills by one of the two parties who were materially interested in them. The result of the modified opinions expressed by Government officers in support of the pleas of the zemindars has been modifications on some points that appear in the Bill as now revised, and a decided opening of the door for further modifications in the present letter of the Government of India and the last published despatch of the Secretary of State. Lastly, it will be observed that the letter of the Bengal Government, while expressing decided views, invites a free expression of the opinions of Commissioners and district officers, and in one instance goes so far as to call particular attention to the dissents of members of the Select Committee.

Thus, officers who have the true interests and the good name of the Government at heart, who think them likely to be affected by the present Bill, and who at the same time have the courage of their opinions, may be able to give really useful assistance by freely expressing those opinions now, though they do so with brevity, by saying that such a section or proposal is unjust, unfair, unnecessary, an infringement of rights, &c; while at the same time prepared to loyally carry out whatever measure may be finally determined on by the Government they serve.

7. In the remaining paragraphs of this circular the following abbreviations should be noted:—

The red figures[1] refer to items or points mentioned in the Bengal Government circular and the letter of the Government of India, and the corresponding figures will be found in the enclosed copies of those papers.

[[1] Denoted with an asterisk in print.]

S, means section of the revised Bill.

B. 8 or 9, &c., means paragraph 8 or 9 of the Bengal Government circular.

I. 8, &c., means paragraph 8 of the Government of India letter.

C. 8, &c., means the paragraph of the Select Committee's Report.

K., with a figure, means the dissent of Baboo Kristo Das Pal, and the page of Part V of the *Gazette of India* of 29th March 1884, where the passage referred to will be found.

I need scarcely say that information, &c., is required in the case of Julpigoree in regard to the Regulation portion of that district only, and in the case of Darjeeling what is sought is information as to special peculiarities in any part of the country, and the Deputy Commissioner's general opinion on the points raised, or any others not raised. District officers are requested to cite the numbers of my paragraphs, and also to give (in red ink) the red figures when replying or reporting on each point.

8. (1) 1* *and* 2,* *B.* 4 (*a*) *and* (*b*).—Probably the addition of the words "or a lakhirajdar" would suffice as regards (*a*), and it does not seem necessary to make local enquiries.

As regards (*b*), brief enquiries should be made from one or two munsifs whether they have observed in rent-suits that in holdings of more than 100 bigahs there are generally under-tenants, or whether in many holdings of that size the whole is cultivated by a ryot, his family, relations, hired labourers, &c. Similar enquiries might be made verbally from zemindari managers by Sub-divisional Officers and head-quarters ditto. There is of course a fundamental objection that the clause (5) would throw on the zemindar unfairly the onus of proving a negative, instead of the Legislature adopting the ordinary principle of law everywhere else, that a man claiming a special right, &c., is bound to prove it.

9. (2) 3,* *B.* 4 (*c*)—*I.* 6—*C. Chapter V of their Report.*—This section 37 is a point that requires a good deal of consideration. There is first the question whether the danger of occupancy holdings falling into the hand of money-lenders is a serious one or not. However that may be, I am inclined to think that if occupancy holdings are made transferable, it will be impossible, whether by section 37 or by any other provision that is not open to objection, to prevent a money-lender from getting such holdings. A money-lender may be, and often is, a cultivating ryot. It would be possible to provide simply that no money-lender may acquire an occupancy holding, but it is objectionable to bar by express legal provision any class from acquiring an interest which all other classes may acquire; and the class which would be excluded would be men with capital, who, if so minded, could spend money in improving the holding. It would further reduce the value of the occupancy right, as a very likely class of purchasers would be unable to purchase. Again, the section would involve a local enquiry to ascertain if more than half the holding was sublet, and, as the Government of India observe, (1) it would not be easy to find that out, while (2) it might not be to the interest of the holder to have such subletting known and registered; though, as regards the latter point, I think that, as a general rule, it will be to the interest of the holder to sublet and to register, as by the change to a tenureholder he gains advantages as regards the points of pre-emption and distraint. This last consideration suggests another objection to section 37, viz. that it will encourage what all are anxious to prevent, viz. subletting.

In addition to all these objections to section 37, there is, what seems to me, another very important one. Though it would attain one of the objects of the Bengal Government, viz. facilitate the acquisition of occupancy rights, is it fair to give that facility in addition to all the other provisions of the Bill to the same effect?

Two more remarks occur to me here. One is that the assumption of the Bengal Government in the last three lines of page 2, paragraph 4, is with all respect erroneous, as the zemindars, one and all, object *in toto* to making the occupancy right transferable at all. The other is that by the (in my opinion satisfactory because just) rejection of the principle of limiting non-occupancy rates of rent to the same extent as occupancy rates, the efficiency of section 37 to limit rents will be much affected, apart from the question whether it is just or right that it should limit them.

10. (3) 4,* *B.* 5, *Section* 8, *&c.*—The first point of all to be considered is whether it is necessary, or is fair to the zemindar, to impose any specific limit of 10 per cent., or 25 per cent., or any other limit whatever, to the enhancement of the rent in excess of and beyond the existing limitations provided by contract or by established custom, and by the 10 per cent. profit proviso in section 7 in the case of tenures, and in excess of the limitation of prevailing rates, and of the principle of proportion when applied to rise in value of produce in the case of occupancy tenures. Considering what a real limitation prevailing rates have now got to be—and the same as regards the proportion principle—is any *further* limitation really required; and considering how much of the land in the country was jungle at the time of the Permanent Settlement, and the exhortation addressed by the Governor-General in Council in the Permanent Settlement Regulation to the zemindars to "exert themselves in the cultivation of their lands under the *certainty* that *they will enjoy exclusively* the fruits of their own good management," &c., is it right to go any further in imposing limits and in granting to ryots a larger portion of those fruits than Act X of 1859 has already gone? The above consideration also applies to the question of fixing a period within which no second enhancement is to be made. If a railway is made two years after an enhancement, and increases the value of the produce of the land, is it fair to exclude the zemindar from all share in the increased value for eight or for five years?

If Government, however, decide on imposing further limitations, and if it is thought right and advisable to establish uniformity between tenures and occupancy holdings in these matters, then a question arises whether the occupancy holding limitations, or the tenures ditto, should be adopted for both. Cases are well known where the value of land is increased much more than double without the ryot doing anything to increase it.

With reference to the second clause of B. 5, local enquiries will be necessary to ascertain the basis on which the rent of what is called a tenure in the Bill (which is a holding above that of an occupancy holding in status, and with, I believe, an universal right to sublet) is enhanced when it is liable to enhancement at all.

There are probably in this Division two main classes of tenures, viz. the Rungpore jotes, and others. As regards the "procedure" of Chapter III of the Bill, so far as I can see, it provides for very little of that, but implies that an application must be made to a court to enhance the rent.

11. (4) 5,* *Chapter IV of the Bill. B. 6—I. 7 and Chapter VIII, Section* 64 (2).—The three dissents of Baboo Kristo Das Pal, the Maharajah of Durbhunga, and Mr. Gibbon, referred to at the end of B. 6—In this case two or three intelligent and leading zemindars and two munsifs should be asked if they know of any, few, or many cases of the presumption being pleaded, and in how many of such cases the zemindar has been able to rebut it, or even to attempt to bring evidence shewing what rent has been paid ever since the Permanent Settlement. I am somewhat surprised at the opinion expressed in B. 6 that it is a "reasonable presumption," because "it throws on the landlord no greater burden of proof than in ordinary cases he should be easily able to discharge." I had experience as a Collector of enhancement suits under Act X of 1859, and I once acted as an Additional Judge for seven months, during which period I did little else but hear appeals from decisions in such suits. In all the cases that came before me in either capacity, I do not remember a single instance in which a zemindar was able to rebut the presumption so often made, nor is this to be wondered at. Between 1793 and 1859 (or 1858) no zemindar had the least idea that Government would ever think of passing such a provision of law; and, consequently, even in cases where estates have remained in the same hands for two or three generations, no zemindar thought of keeping his rent-books for periods long after claims to rent were barred by limitation. It is well known that before 1859 kabuliyats were scarcely ever taken, not perhaps one for every five thousand ryots in Bengal, and thus it is impossible for a zemindar to disprove the presumption. On the other hand, as Mr. Gibbon observes (in the centre paragraph, page 105, *India Gazette*, Supplement Part V, 29th March 1884), the old Regulations made it compulsory on zemindars to give pottahs, and pottahs are frequently produced by ryots when it serves their purpose; so it is far easier for the ryots to prove than for a zemindar to disprove. In cases where an estate changes hands, it is often impossible to get any zemindari papers whatever; in fact, it is always so when an estate is not sold by the free will of the proprietor. How, then, can the succeeding zemindar rebut the presumption? That it has conferred rights intended for holdings of the time of the Permanent Settlement on holdings constituted long after it, no one doubts. For these reasons it has always seemed to me that the presumption is a very unreasonable and unjust one, and I am not without a hope that the provision may be abandoned. Even Mr. Reynolds used to be in favour of rescinding this section of the present law, though he has changed his opinion, and what he said on the subject, quoted by K. 87, is worthy of attention. "The Collector of Purneah," Mr. Reynolds says, thought "there is hardly an estate in the whole of Bengal in which the value of the proprietary right has not suffered from the presumption." If, however, it is decided to retain the presumption, then I trust that all Government officers will agree with the Government of India in thinking that some restriction, whether one of those numbered as (1) or (2) in I. 7, or any other, should be imposed on the section as it stands.

12. (5) 6,* *B.* 7.—If Government determine to create the settled ryot in Bengal as well as Behar (the fairness of doing which seems to me the first point for consideration), then, as butwaras are not frequent in this Division, I doubt if there is any special reason why 1st January 1853 [see section 27 (*b*)] should not be taken as the date which will form the basis of the definition of the word "estate." A report is requested on that point. But it occurs to me that if the entire proposal is adopted, the ryot's occupancy right derived from his being a settled ryot should be restricted to the land he occupies at the time he claims that right, and that he should forfeit it if he does not claim and register it within one year of the passing of the Bill, or of the accrual of the right subsequent to the passing of the Bill. Take the case of a parent estate in 1854 partitioned in 1855 into four estates—W, X, Y and Z. When the Bill passes a ryot has land in Z, having held it for one year, and having held other land for eleven years in Y, which he left of his own accord. Supposing that Government decide on giving him an occupancy right in the land in Z that he holds at the time of the passing of the Bill, is it fair to provide that if the proprietor of W lets land therein to that ryot fifty years hence, the ryot will, immediately on entering, have a right of occupancy in that land merely because it was, in 1854, part of the parent estate? Opinion is requested as to whether this is just to the proprietor of W.

13. (6) *Nil.**—*Section* 28.—It should be considered whether it is just and fair to prevent by special legal provision one person in the whole world, viz. the zemindar, from acquiring a right of occupancy, that one person being, moreover, he whose prior claim to that land is acknowledged elsewhere in the same Bill by giving him a right of pre-emption in case the land is sold.

14. (7) 7,* *B.* 7.—As regards the conflict of section 29 (1) with section 28, that seems a point for a lawyer to give an opinion on. I gather that 29 (1) is meant to qualify section 28. As regards the latter part of this portion of B. 7, it should be considered whether it is just and fair to give a man who begins life as a ryot, and becomes a zemindar afterwards, a right which is denied to another man who has always been a zemindar.

15. (8) 8,* *B.* 8.—Probably (*b*) and (*c*) of section 31 will be thought to call for no remarks. Then comes (*c*). Is this provision necessary in addition to those restricting enhancement of rent in occupancy holdings? As regards (*d*), ought not payment of rent to be the first condition of occupancy, and ought not the ryot to be liable to ejectment if he withholds it for more than three months after it is due, unless a special cause, such as a failure of crops, is established? Then comes (*f*), which involves the entire question of transferability of the occupancy holding already referred to. The first main question is whether it is just to make it transferable without the zemindar's consent, unless he is given a *quid pro quo* by making registration of the occupancy right compulsory, and the holdings saleable like putnis. Here the questions already treated of, whether it is possible to keep out the money-lender if the holdings are transferable, and whether it is advisable to do so in the face of the objections to any provisions framed with that object, again come up. The concluding sentence of B. 8 again suggests that it would be unfair to both zemindar and occupancy ryot to diminish the sale price by excluding the money-lender class of bidders. As regards preventing that class from rack-renting under-tenants, it seems to me that section 62 will effectually prevent this, whether the rent-receiver be a money-lender or not.

16. (9) *Nil.**—*Enhancement.*—Section 39 seems to be directed *against* enhancement, which heading might well be put below it. But is there any necessity for the section in addition to the other restrictions on enhancement, *i.e.* the grounds (section 43) on which alone the rent may be enhanced?

Section 41.—Is it advisable to so restrict the right of private contract?

17. (10) *Section* 42. 9,* *B.* 11, *I.* 12.—I am surprised at learning from the part of B. 11, in page 6 of that letter, that the idea of the liability of a non-occupancy ryot to have his rent raised to a higher amount than that of an occupancy ryot can be raised is new to the Lieutenant-Governor. Nor do I understand how it is considered that the provision in the Bill will introduce that liability for the first time into the land law of Bengal. Under Act X of 1859, and Act VIII (B.C.) of 1869, the rent of the occupancy ryot can only be raised to prevailing rates, or in proportion to increased value of produce, or to productive powers of the land; whereas no limit is declared in the case of enhancement of a non-occupancy ryot's rent. The liability of the non-occupancy ryot to pay a higher rent than the occupancy ryot therefore seems to have existed ever since the occupancy ryot was invented. As regards the main question of section 42, there are probably no local circumstances in this Division likely to produce intricate and costly legislation more than elsewhere; but still, considering all the objections to it mentioned in the two Government letters, and the further objection that occurs to me, viz. that, as worded, it seems doubtful whether, on a settled ryot entering a holding previously held at a money-rent, that rent could ever be enhanced again except by contract, it is to be considered whether the section had not better be altogether omitted.

18. (11) 10,* *B.* 9(*a*).—*Grounds of enhancement.*—Have any, and if any, then have few or many instances of fictitious or collusive rates being advanced in order to establish prevailing rates come under the district officers' notice, or of those of any two munsifs? Would it, in fact, be possible to establish prevailing rates by collusion? Does not a munsif take the rates of two or three neighbouring estates or pergunnahs as the prevailing rates, and would it be possible for a zemindar of one estate to get all the ryots of three neighbouring estates to collude in the way of declaring their rents to be higher than they in fact are, and in this way to virtually agree to pay those higher rents themselves in future, merely for the sake of enabling that zemindar to enhance the rates on his estate? I cannot imagine the establishment of collusive and fictitious rates being possible with the classes of officers we now have as munsifs and appellate civil judicial officers; for though they have, like other men, their own ideas and views in matters in which there is much room for difference of opinion, there is but little room for it on such a point of fact as what are prevailing rates in the neighbourhood.

Again, would not the abolition of the prevailing rate as a ground of enhancement tell most unfairly against the zemindars? It is, it will be remembered, the only easy one to prove.

19. (12) 11,* *B.* 10, *and the first clause of* 15—*Extent or limit of enhancement.*—The first point is whether any percentage limitations should be imposed at all in addition to those prevailing rates and the principle of proportion. It seems to me that the percentage limitations are quite uncalled for. If any are to be imposed, then the difficulties of fixing any particular percentage have to be met. As for bringing into calculations of increased cost of cultivation, it is unexpected that the Bengal Government should (indirectly) suggest it, as the difficulty of calculating the cost, the arguments as to each item, the worthlessness of the evidence, &c., would make each case last for weeks, and cost much more than the amount at issue. It would practically debar the zemindar from enhancing on any ground that would include it. This was the conclusion arrived at by the Calcutta High Court long ago.

20. (13) 12,* *B.* 12.—Enquiries should be made as to whether there are any local peculiarities that bring bastu lands outside of both (*a*) and (*b*) of B. 12. It should be considered whether it would be just to exclude bastu-lands from enhancement because some homesteads in low tracts are raised above flood-level. What has been brought to the Lieutenant-Governor's notice about the screw being applied to bastu lands in districts where there is still waste, and about an inherent affection for his bari on the part of the ryot, certainly does not apply to the two districts of this Division in which there are most waste lands, *i.e.* Dinagepore and Bogra, for different Collectors of those districts have repeatedly reported, with reference to the general question of enhancement of rent, &c., that no zemindar attempts to enhance beyond what the ryots are willing to pay, because, if it were attempted, the latter would leave the estate to settle on waste lands elsewhere. Reports are requested as to existence or not of the custom in regard to bastu mentioned at the bottom of page 7, B. 12.

21. (14) *Nil.** *Section* 47.—In this, besides the point of percentage limitation, a question arises whether clause (*a*) might not be worked by a fanciful munsif so as to prevent enhancement at all in a district like Pubna. He might, for instance, say that all improvement in land by fluvial deposit is temporary.

22. (15) *Nil** *Section* 48.—It is to be considered whether this again, like 31(*c*), might not be worked so as to prevent enhancement without just cause. It is left to each individual to decide what is fair and equitable. This applies to 51 (2).

23. (16) 13,* *B.* 13.—Is any nearly imperceptible cause for deterioration of land known in this Division; and if there is, would not a departure from the preciseness of the section lead to many suits with conflicting evidence and hard swearing to establish and disprove the nearly imperceptible deterioration? As regards the latter part of the same B. 13, I think the question at the end may be answered in the affirmative.

24. (17) 14,* *B.* 14, *and the second clause of B.* 15. *I.* 13—*Price lists.*—This is the special exception to which I referred in an earlier paragraph of this circular. Government directs full enquiries to be made in order to ascertain if it would be possible to obtain from dealers materials for a correct list of prices of staple food-crops for the last 15 years. If it cannot be done sooner, district officers must bring the reports on this paragraph, and suggest any necessary correction in the statements, when they come to the Conference. It should be stated who prepare the Gazette prices now. There may be difficulty about getting prices for 15 years; but I see no reason why, in the course of a cold-season, a district officer and his subordinates should not obtain them at certain fixed marts in his district for five or six years past, and they could thereafter be obtained annually in future. They would be a great help in enhancement and reduction cases, and the Government of India observes that "the zemindars are entitled to some substantial improvement in the procedure for obtaining enhancements of rent in such cases.

25. (18) 15,* *B.* 16, *I.* 15.—*Non-occupancy ryots.*—The Government of India approve of Chapter VI of the Bill. The Government of Bengal think it open to question whether it does not go too far in favour of the zemindars. It seems to me fairly open to question whether it does not go a great deal too far *against* the zemindars. It will be observed that it deprives the zemindar of the right he now enjoys of fixing rent even in the case of this class of ryots; also that he is subject to the fancy of a court officer as to what is fair and equitable, and if the ryot accepts that officer's decision he can retain the land for five years (see K. 93 and 94.) A man can ask what he likes as the price of a horse or a cow, or the rent of a house in a town, but he is not to be allowed to fix the rent of his land, though the person who rents it has assuredly no more right in or claim to it than the tenant of a house or the purchaser of a cow before the purchase. I think the Bengal Government are mistaken in supposing, in the second clause of paragraph 16, that it is admitted on all hands that the status of the non-occupancy ryot needs improvement. The zemindars, among others do not, I think, admit it. Referring to the remarks at the end of this paragraph, I understand that, speaking generally, the result of enquiries in Central, Western, and Northern Bengal was that the zemindars did not prevent ryots acquiring occupancy rights; and in so far as I can remember it is only of late years that the zemindars in Eastern Bengal have done so, owing to combinations among the ryots to avoid paying rent at all if they could help it.

26. (19) 16,* *B.* 17.—Opinions are requested.

27. (20) 17,* *B.* 18.—Opinions are requested on the forms of receipt and account.

28. (21) *Nil.** *Section* 80.—Should it not be made compulsory on munsifs to award 25 per cent. damages in cases where there is no dispute as to the rent, where it is claimed at the same rate as has been paid or decreed in previous years, and where there is no cause for withholding it, such as loss of crops, &c.?

29. (22) 18,* *Chapter IX.—Improvements.* *B.* 19.—Opinions are requested generally, and in regard to the well question.

It should be considered whether, in view of the right to compensation for improvements, an occupancy ryot should not be required to register an application to make an improvement, in order that the zemindar may be heard before hand on the point of whether the alleged improvement will really be one or not. In Ireland small tenants frequently ask for compensation for what the landlord has to spend money in undoing or removing before he can relet the land.

30. (23) 19,* *B.* 20, *I.* 18.—I doubt if there are any local circumstances that affect the question asked in B. 20. As the case is one of a ryot voluntarily abandoning a holding, I do not see how the section can expose to the danger contemplated. No law could prevent an occasional

illegal act, such as a zemindar turning out a ryot by force; but there is a legal remedy for that, and I do not see how the section would help the zemindar to commit such an act. The first part of the section only authorizes the zemindar to do what he now does every day without the section, *i.e.*, take possession of abandoned holdings. The Government of India, it will be seen, accept the section. As regards 96 (3), as a matter of justice, ought not this clause to provide that all rent due by the ryot to the date on which he abandoned the holding must be deposited in court when he institutes the suit?

Touching the question asked at the end of B. 20, should it not be left to the zemindar to choose whether he will sell the occupancy right to realise his rent or enter on the holding?

31. (24) 20,* *B.* 21.—It is most necessary that the zemindar should be allowed to measure lakhiraj lands to see if the lakhirajdar holds any mâl lands also; but I see no reason why the zemindar should be allowed to measure in more detail than is necessary to ascertain the total area of each separate bit of land. It is very desirable to get rid by degrees of all local standards, and I think section 101 should stand, particularly as the equivalent in local bigahs can be calculated without difficulty. The ryots would be able to count the number of *haths*, poles, &c., measured by the amin, whether he wished it or not.

32. (25) 21* *B.* 22.—Opinions about a joint manager are requested. There is much to be said on both sides. I was in favour of it, and should be now in cases of serious disputes, were it not for the provisions of section 73, which are perhaps enough.

33. (26) 22,* *Chapter X, Sections* 110 *to* 116. *B* 23. *I.* 19 *and* 20. *K.* 95 *and* 96—*Record of rights.*—It is proposed to attempt to make for the whole of the Lieutenant-Governorship, and in permanently-settled estates, what is now done in a modified degree in estates coming under temporary settlement, and what is done very fully indeed in some such settlements, as, for instance, all that was settled and recorded at my instance in the last settlement of the Western Dooars of Julpigoree. Where an estate is under temporary settlement, Government can make such conditions as they think fit, and can do much what they please; while there can scarcely be a question as to the immense advantages of first settling and then recording the rights, the lands held, the rents, &c., of all classes of tenants for the period of settlement. The saving of expense, time, and trouble, the avoidance of ill-feeling all involved in litigation, for which there is no room when all this is settled, is an enormous advantage, and if it could be done now in permanently-settled estates, so as to secure such a result, there would probably be but one opinion about it. But without the powers available when making a temporary settlement, it is certain that very much less can be done and settled. Classes of tenants with fixed rights and rents for the period of settlement cannot be established. (A) A record made in 1885 that A. is an occupancy holder of holding B., may be quite useless in 1888, owing to A. leaving it, and to its being split into three holdings, given to three non-occupancy ryots, or split into four bits, two of which are given to non-occupancy ryots and two to adjacent occupancy holdings, thus also affecting the record of their holdings made in 1885. Such changes can be prevented to a very great extent in the case of temporary settlements; and where any are allowed or take place, a knowledge of them can be secured in a great majority of cases and a record made at the time; while any that have not come to light are detected at the expiration of the temporary settlement. (B) But there is still more to be said. The Government of India (paragraph 20) and the Select Committee (latter part of their paragraph 73) agree in thinking that no higher value can be given to an undisputed entry than [section 116 (2)] that it shall be presumed to be correct till the contrary is proved; and though in the latter part of B. 23 we are asked if we think a higher value can be given as regards some matters recorded, I feel sure that all officers with mofussil experience will reply in the negative, as it is difficult to conceive a greater danger to the rights of a ryot than a record of what the zemindar's naib chooses to describe them in that ryot's absence; while it would be impossible to secure the presence of all the ryots, and often difficult to make a ryot understand the point at issue even when present. Assuming that no higher value will be given in undisputed cases, which will, owing to absence of ryots, form a large majority of those recorded, it is a question for consideration whether it is worth while to undertake an expensive operation of such magnitude in order to secure the advantage that would result from it, which would be limited to cases in which a holding will never vary in any respect in a country where variations are always going on, and to the comparatively few cases which would be disputed before the revenue officer. Next, the objection taken by K. 96, as to the perjury and forgery that will be promoted in disputed cases, should not be forgotten. I am inclined to think that the operation should be limited to three classes of cases—(A) *first*, those in which both the zemindar and the ryots apply for it, and are willing to pay for the limited advantages it will secure; *second*, those in which interference on the part of Government is advisable on public grounds to prevent riots, &c.; and, *third*, cases in which auction purchasers are unable to obtain zemindari papers and apply on that ground. (B) Opinions are requested on this general question, and on the other points raised in the sections and paragraphs cited.

34. (27) 23,* *I.* 21.—Opinions are requested as to whether 15 years is not too long a term. As has been already observed, the opening of a railway two years after a settlement or enhancement may increase the value of the produce considerably, and is it fair to exclude the zemindar from all share in the increase?

35. (28) 24,* *Chapter XI. I.* 22, *K.* 96.—I thought that the result of the enquiries made by three officers in different parts of the country had shown to Government the utter uselessness of attempting to frame a table of rates. They vary in every possible manner for the same

classes of lands, even when held by the same class and caste of ryots in two contiguous estates, and even in one and the same estate. I think the idea should be abandoned.

36. (29) 25,* *B.* 24, *I.* 23, *K.* 96 *and* 97.—Reports are requested as to the existence of other lands known as khamar, &c. Is not all waste land considered the private land of the zemindar until he lets it, and ought it not to be included in the khamar land with reference not only to custom, but to the declaration in the Permanent Settlement that the zemindars were to have a certainty that they would enjoy exclusively the fruits of the lands they might bring into cultivation?

37. (30) 26,* *Chapter XIII, Distraint. B.* 25, *I.* 24, *K.* 97.—The Government of India say they are ready to consider any suggestions for further improving and cheapening the procedure adopted by the Select Committee. It should be considered whether, if it be made compulsory on the court to make an order under section 141 (3) *in all cases immediately an application is presented,* and in cases of ripe crops to have them cut and stored at the eventual cost of the loser, the procedure of the Bill thus amended may not replace the present practice. But I think the two amendments are absolutely necessary, as the delays of hearing, &c., will otherwise make the remedy by distraint practically nil.

37½*. (31) 27,* *B.* 26, *I.* 25 *and* 26, *K.* 97 *and* 98.—Opinions and suggestions (if any) are invited, especially on the sections mentioned in B. 26. The provisions seem fairly good as far as they go; but the arguments in K. 97 and 98 should be considered, as also whether the compulsory registration of occupancy holdings and making them saleable like putnis is not the best and simplest remedy of all, and whether it should not be given in justice to the zemindars as a set-off to making the holdings transferable. Either that, or the Bill of 1877 proposed by the late Lieutenant-Governor, and the introduction of which was sanctioned by the Government of India (but which was never introduced), would, I think, be preferable to the procedure of the present Bill.

38. (32) 28,* *Chapter XVI. B.* 27 *and* 28, *I.* 27.—Referring to section 209 and B. 28, any views entertained about registration should be stated.

39. (33) 29,* *Chapter XVII. B.* 29, *I.* 28, *K.* 98 *and* 99.—The first thing to be considered seems to me to be whether, in Bengal Proper at any rate, complete freedom of contract is not the only sound principle, and whether the entire chapter, save section 217, had not better be omitted. If contracts are to be barred at all, then opinions are requested as asked in B. 29. It will be observed that I. 28 refers to suggested modifications on two points.

40. (34) 30,* *B.* 30.—Reports as to custom and the sufficiency of section 227 are requested.

41. (*Nil.*) *B.* 31.—In the foregoing paragraphs I have drawn attention to several matters in the Bill, or that I think ought to be in it, which are not noticed in the Government letters. If any other points occur to district officers, they should be mentioned.

42. (35) 31,* *B.* 31 *to* 34, *I.* 2.—Points 2, 3, 5, and 6 of I. 2—

Point 2.—If there are such talooks, the questions asked in B. 31 should be answered. It seems advisable to subject any such talooks to the putni sale procedure, and not to increase the number of direct payments to Government.

Point 3.—This suggestion of the Government of India seems an excellent one. Almost every district officer knows something of the trouble of realizing cesses of lakhiraj lands, and I think the putni sale procedure might well be applied. If it is, lakhirajdars will pay cesses most regularly.

Point 5.—If *utbundi* or *halhasili* tenures, or others like them, exist, the report asked for in B. 33 should be submitted.

Point 6.—The report required by B. 34 as to the existence of such tenures, and, if they exist, as to their treatment, should be submitted.

W. LeB.—Reg. No. 1026T—17-9-84.

No. 424RCt., dated Darjeeling, the 16th August 1884.

From—Lord H. Ulick Browne, Commissioner of the Rajshahye Division,
To—The Secretary to the Government of Bengal, Revenue Department.

I have the honour to reply to Government circular No. 3T—R, dated 24th May 1884, on the subject of the Bengal Tenancy Bill.

2. In order to clear the ground, as it were, for the prescribed Conference, and to facilitate and reduce its labours, I addressed the district officers, requesting them to consult and make enquiries from persons of all classes and occupation, and from public bodies whom they might think likely to respond with advantage, and to let me have preliminary reports, giving the results in the form of their (the district officers') opinions and findings of fact in regard to such points as could be sufficiently dealt with earlier than others, leaving such as required the most extended enquiries and the fullest consideration for the Conference. This plan has answered very well, for in regard to a few points, either owing to their own nature or to the nature of the replies, discussion at the Conference became unnecessary, and in regard to several others I was able before the Conference to draw out an abstract of the replies on the point, shewing the principal directions which discussion should take in consequence of different circumstances found in the districts, or different opinions formed on different considerations, which saved much time at the Conference.

3. With one exception I consulted no one direct in addition to the district officers. The exception was Mr E. V. Westmacott, C.S., who, for a combination of ability and experience, has few equals among Government officers who have been in charge of Bengal districts of late years. I learnt from him incidentally that he had not been consulted direct by Government on this occasion, and in consideration of his long experience in, and intimate knowledge of, the Dinagepore district, and of his recent experience in Eastern Bengal, I asked him to let me have his views on the Bill and the connected papers, which he was good enough to do.

He was unable to be present at the Conference, which was attended by the district officers and myself, and this letter is the result of it and of the preliminary reports.

4. *General.*—I think the provisions of the Bill may be roughly classified as follows:—

A.—Provisions that abolish or affect seriously the existing rights of the zemindars, and confer new rights on other classes.

B.—Provisions which, entirely apart from the question of interference with existing rights, are much in favour of the ryots and against the zemindars, and which, abandoning the main principle on which our legal system is founded of requiring all who claim a right to prove it, assume almost every thing in favour of the ryot, and impose on the zemindar the onus of proving or disproving every thing when questions of a right arise.

C.—Provisions also framed in favour of ryots and against zemindars, of a theoretical and fanciful nature, that are opposed to all recognised laws of supply and demand, and of market prices regulating the value of all commodities, and that are opposed to the principles of English Government under which sane adults are considered the best judges of their own affairs, and are free to enter into such agreements and bargains as they choose.

D.—Provisions of a more practical nature, framed with the objects of improving procedure in legal business between all classes interested in land, of registering and recording the rights and interests of all such classes, and of obtaining good bases on which the important question of enhancement and abatement of rent can be decided more easily and quickly.

The Bill seems to me to have serious defects in the way of three important omissions. The origin of all these Bills was the want of speed and easy means to enable zemindars to recover their rents, especially in cases where no dispute as to the amount in arrear existed. The necessity of granting such means was admitted on all sides in 1877 and 1878, and at the instance of the late Lieutenant-Governor a Bill to grant them was submitted to, and was approved by, the Government of India. Nevertheless, there is no provision in the present Bill giving substantial relief to the zemindars in this matter. Again, no sufficient penalty is provided for the persistent withholding of rents by ryots when there is no dispute whatever about it, and when it is claimed at the rate paid or decreed for years. Lastly, no penalty is provided for what Mr. Oldham terms wanton or collusive denial of the landlord's title.

5. As regards the provisions under class D, it is scarcely necessary to say that the seven district officers, Mr. Westmacott, and I, are all in favour of enacting such provisions, and that the only question in regard to them is how far they are calculated to secure the ends in view.

6. The following general preliminary opinions on the Bill as a whole have been expressed by the district officers and Mr. Westmacott. It will be observed that, with a few exceptions, Messrs. Oldham and Bolton approve of the provisions which I have classed A, B, and C, there being more exceptions in the case of Mr. Oldham than in that of Mr. Bolton, and that, with a few exceptions again, Messrs. Livesay, Newbery, Ruddock, Dalton, and Tute are opposed to those provisions.

As regards the omissions, the only district officers who refer to them in their general opinions are Mr. Ruddock, who refers to the first of the three only, and Mr. Oldham, who brings all three to notice, and whose remark about it drew my attention to the third omission. It will, however, be observed from the opinions given under section 31 (*d*), at the commencement of my remarks on chapter XIV and on section 80, that Mr. Bolton is the

only member of the Conference who is not in favour of supplying the three omissions, and that he would agree to making occupancy tenures liable to the putnee summary sale procedure, if he thought their registration practicable.

Mr. Bolton, Collector of Pubna, says—

"That the relations between landlords and tenants throughout Bengal and Behar are on so unsatisfactory a basis as to call urgently for legislation appears to me unquestionable; and I entirely sympathise with the objects and approve of most of the leading principles of the Bill. The measure endeavours to do justice to both zemindars and ryots, and, if the former find in some of its sections provisions which they think themselves justified in stigmatising as revolutionary, confiscatory, and unconstitutional, it is because their conduct, as a class, both in the present and in the past, has afforded ample cause for the proposed introduction of those provisions into the law. They have, I think, reason to complain of the inadequacy of the provisions of the Bill, which aim at effecting an improvement in the procedure for the recovery of arrears of rent, and I trust that it may yet be possible to strengthen their position in this respect (although the subject is unquestionably one of very great difficulty); but as regards generally the provisions which enunciate, confirm, and seek to protect the rights of the tenantry, their objections should not be allowed to prevail. While thus approving of the general scope of the Bill, however, I am of opinion that the measure needs amendment on several important points. I would not, for instance, formally recognize the rights of transfer and subletting, and I would abolish the presumption with reference to the payment of rents at fixed rates for 20 years after two years from the passing of the Act, allowing tenants who claim to hold at fixed rates, and have not already secured a decree, to file a suit within that period to establish their right, unless they can effect a private arrangement with their landlord."

Mr. Tute, Collector of Dinagepore, writes—

"I am one of those who think that a Rent Bill is necessary. In Bengal for the purpose of realizing rents, and in Behar for the purpose of preventing the rights of occupancy being broken by arbitrary shifting of ryots from one piece of land to another. On this latter point, I am guided by the literature which has sprung up since the rent question was started. My Behar experience was that of a junior officer, and the question never came before me in such a manner as to enable me to study it.

"The present Bill I must emphatically condemn.

"I do so for the following reasons:—

"1. It is perfectly uncalled for in its present form. There has been no demand for legislation on the part of the ryots, and the Bill has arisen out of a representation on the part of the zemindars for additional facilities for the collection of their just rents.

"2. It will tend to alienate and embitter the one class of the community who have always been staunch and loyal to Government. The fact that these people will not rebel or do any act absolutely hostile to Government, in consequence of the manner in which they have been treated, renders the passing of this Bill to my mind an act unworthy of a great and powerful Government.

"3. It will fix people, by the creation of new and fanciful rights, on the soil, which is admittedly unable to bear the pressure of population already on it, and will discourage the one remedy for the evils under which the ryots of Behar are suffering—the natural remedy of emigration.

"4. It will be absolutely unworkable unless Government is prepared to create an army of officers to cope with the legislation which might necessarily follow in its train.

"5. It is a distinct breach of the solemn promise given by the Government at the time of the permanent settlement, the wisdom of which it is not now in our power equitably to call in question."

Mr. Tute adds that the Bill has raised apprehensions in the minds of the ryots in a part of Dinagepore, which may be thus expressed: "If the Government takes so much away from the zemindars, what will they leave to us?"

Mr. Oldham, Deputy Commissioner of Darjeeling, says—

"I think the Bill fails to provide sufficiently speedy and easy means for zemindars to realise their dues.

"Also that it does not penalize with sufficient peremptoriness wanton default by ryots, and wanton or collusive denial by ryots, of the landlord's title.

"I disapprove altogether of those new measures in the Bill which tend to loosen existing bonds between zemindars and ryots, to lessen the former's powers for self-government, and to increase the burden of public work; and still more strongly of those provisions which, while helping to effect the foregoing, are purely experimental in themselves, and, moreover, are quite uncalled for by any state of things that has yet arisen.

"As an instance of the former, I quote the creation of transferability, and of the latter the improvement sections.

"I disapprove strongly of those sections which will encourage subletting and the creation of a class of middlemen.

"Finally, I disapprove of all measures which are experimental *and* which experience has not shewn in some part or other of the province to be demanded.

"I warmly advocate those portions of the Bill which, taking what is recognized as good in existing agrarian conditions, will preserve it where it exists, and will restore it where it has been

destroyed. As an instance, I take the provisions for the settled ryot, and those provisions which tend to minimize the differences between occupancy and non-occupancy ryots, to control the initial rent, and to bear competition rents. I regard these provisions as likely to fix in Bengal what Rai Kristo Das Pal has declared to be its actual conditions, viz. that 90 per cent. of the ryots are occupancy ryots; and to restore this state of things in Behar. I support all the provisions which tend to prevent frequent or violent changes.

"As regards enhancement, I admit that existing legal means have failed, and that experimental means of the probable success, of which I cannot judge, must be tried.

"I dissent from the opinion that there should be a different Bill for Behar and for Bengal. The sections levelled against existing abuses in Behar can do no harm in Bengal, if the abuses do not exist, but will prevent their extending to Bengal.

"In this connection I would give the utmost prominence to the section saving custom, and would make it the first or second in the Bill. In my experience a custom is worth 20 laws. Civil courts are largely guided by custom. Regard to custom would regulate the differences between Behar and Bengal.

"I entirely dissent from those opponents of the Bill who base their objections on what they call natural laws, such as demand and supply, competition, and freedom of contract. I urge that the Bill should only be considered with regard to the actual state of things found by experience to exist in the province. So-called natural laws will be found to be conditions existing in small and civilised homogenous Committees like the population of England, and impossible among the heterogenous millions of Bengal. Other so-called natural laws, like subletting and competition, can be checked. Subletting has been condemned by us all. Competition will plainly do more to disintegrate what there is of good in existing agrarian conditions than anything else. Freedom of contract, as enforced under English nations, has been the most mischievous factor since the British accession in peaceful times in India. Under its operation our system is called a *Bania Raj*. We have all seen under it old proprietors ousted for and by rack-renting traders and absentees. I have seen under it the oldest Raj in Bengal transferred from the resident descendant of its proprietors for centuries to a Bengali tradesman living in a back lane in Calcutta. Under it I have had, here in Darjeeling, to give a Marwaree money-lender a decree for interest at 485 per cent. against a hill cultivator. I would protect the zemindars against it, and would protect the ryots from it, against the zemindars by this law, and against the trading public by not creating transferability. A prominent instance of the application of "natural laws" to Bengal was the management of the famine in 1866 by the law of demand and supply.

"I would in fine have no experimental innovations, but would ascertain whatever is good, either in actual law or practice, enact it, and make it general; and then bind zemindar and ryot, in mutual dependence, as hard and fast as they could be found, retaining the old relations by which the former were the protectors, and in a large degree the governors, of the latter."

Mr. Dalton—

"Granting that in certain parts of Bengal there is need of exceptional legislation to protect ryots from being moved from one plot of land to another by landlords with a view to prevent the occupancy right from accruing, the necessity for local rather than general legislation would seem to be indicated.

"The rights conferred by the Bill on non-occupancy ryots are tantamount to confiscation of the landlord's rights.

"Finally, to attempt to override the freedom of contract by a series of bye-laws which aim at meeting every contingency, but which cannot by any possibility do so, appear both mischievous and objectionable.

"The Bill will undoubtedly create unnecessary litigation, and will embitter the relations between landlord and tenant.

"As a general measure it is uncalled for, though a few of its provision might be advantageously introduced as amendments to the existing law."

Mr. Ruddock—

"I desire to briefly place on record my reasons generally for objecting to the Bill.

"*1st.*—Though I admit from my own experience considerable legislation in this direction may be required for Behar, this is not true for Bengal; and it seems to me it would have been better to have made a special Bill for the former province, and not have included Bengal in the sweeping measure now under consideration. Take one point of difference only: it seems generally admitted there has been scarcely any tampering with the right of occupancy on the part of the zemindar in Bengal.

"*2nd*—When there has been no demand or agitation on the part of the ryot for these changes I think it impolitic to do anything to alienate the zemindars, who have been distinguished for their loyalty to the British rule, or to raise a doubt as to the good faith of the Government.

"Not only has the zemindar this feeling of distrust; but from an instance mentioned to me by Mr. Tute, it appears that the ryot, who is usually looked upon as so stupid and ignorant, has reasoned the matter out in his own way with the same result to himself; for he asks, if Government can treat in such a way powerful zemindars, what will be its treatment of poor men like himself when it comes to their turn.

"4. Another effect of the Bill will be the setting of class against class, and an enormous increase of litigation, and *apropos* of that I may mention another instance of the misinterpretation of the motives of Government given me by a very intelligent small zemindar, viz. that Government wanted to raise a big stamp revenue by this increased litigation, and by the consequently increased sale of court-fee stamps; and he added that 'it was not the duty of the ruling power to make a profit by encouraging litigation between two classes of its subjects.'

"5. This feeling of distrust will also tend to discourage enterprise, and so cause injury to the labouring classes.

"6. The interference in the Bill with freedom of contract, I consider impolitic and practically impossible.

"7. As to the zemindar the Bill does not give him sufficient protection and assistance for the realization of his rents, the original object of the Bill.

"8. And as regards the occupancy ryot there is a great danger that the unlimited power of transfer will lead to the ruin of the very people intended to be benefited, and to the creation of a class with regard to whom the Legal Member of Council has himself admitted further legislation will probably subsequently be necessary.

"9. I have also heard it argued that the extensive litigation will lead to the ruin of small zemindars, and to the probable absorption of their estates in the large zemindaris. I do not lay much stress on this point, but merely mention it as the opinion of small landlords.

"10. As to Government and its servants. The work and responsibilities of the latter, and the expenses of the former, will be enormously increased.

"11. As regards my own district—Rajshahye—the relations of landlord and tenant are generally satisfactory, and where blame does attach, it attaches as frequently to one class as to the other.

"12. Lastly, I would remark that India, so honeycombed with customs, seems to me the last country in the world where such sweeping experimental legislation should be attempted."

Mr. Newbery, Collector of Rungpore—

"I would desire to put on record my condemnation of the Bill as grossly unfair to the zemindars, as being calculated to stir up strife all over the country, and as being a most impracticable, fanciful, and unworkable piece of legislation."

Mr. Livesay, Collector of Bogra—

"I approve generally of the provisions of the Bill with the alterations recommended by the majority of this Conference. It is most desirable that this all-important and difficult question should be satisfactorily (and therefore amicably) settled once for all, and I think that the Bill, with the suggested alterations, ought, and probably would, be accepted by most of the zemindars and the ryots of Bengal proper, Behar, and Orissa as a practical, just, and final settlement of the whole question."

Mr. Westmacott—

"I regret to be obliged to express my opinion that the proposed Bill as a whole appears to me objectionable. In place of defining existing rights, or restoring rights which have been lost, it appears to me to create new rights and abolish existing rights in a manner which is revolutionary and inconsistent with the existing relations between landlord and tenant, which have grown up partly upon ancient and traditional land law, partly in obedience to natural laws which it is impossible for legislation to counteract, and partly upon legal enactments which, whether originally objectionable or not, have gradually come to be accepted and recognised by both landlord and tenant. It appears to me that the proposed Bill tends to disturb existing relations, to open new questions, to lead to litigation which will be disastrous to the agricultural community, and, where it attempts to deal with acknowledged grievances, that it will fail to attain the object proposed."

In his covering note forwarding his report, Mr. Westmacott expresses satisfaction at being able to record his "protest" against a Bill which he terms "theoretical," "impractical," and "revolutionary," and he adds—

"In many matters I am not at all inclined to concede what the landlords ask, but on the whole my experience in dealing with ryots throw my sympathies on the side of the landlords, and I think the general tendency of the proposed Bill grossly unjust to them."

I entirely concur in disapproving generally of almost all the provisions that come under classes A, B, and C, and on the omissions which I have mentioned. I consider A to be uncalled for and unjustifiable by the facts, *i.e.*, the circumstances and state of the country under which they are proposed. Not a single provision of the kind was thought necessary in 1877 and in 1878 by the Lieutenant-Governor or the Governor-General in Council when the Bill to facilitate the recovery of rents was proposed and approved, and the zemindars can fairly challenge the Government to shew that an important change in the relations of zemindars and ryots, and in the conduct of the former to the latter, such as calls for a revolutionary measure of this kind, has since occurred. That there should be some bad men among zemindars as among all other classes is inevitable, but the existing laws, civil and criminal, provide penalities for incidental acts of oppression and extortion, and neither this Bill, nor any other that could be passed on the same subject, would prevent the occurrence of such acts now and then. I think it would be a moderate request if the zemindars asked the

Government if they have heard of five thousand well-proved instances, or about one to every ten thousand of the population affected by the permanent settlement during the last five years of acts of real oppression which call for such a Bill as this, and yet I think Government would easily find as many instances.

I think B most unfair to the zemindars, irrespective of their rights as declared proprietors under the permanent settlement, and that C are most objectionable in addition to their unfairness to the zemindars, because unsound in principle, opposed to natural laws, and to a great extent impracticable and unworkable.

I further think that the general effect of A, B, and C would be to stir up ill-feeling, strife, and discord between zemindars and ryots, and to place them in a position of permanent antagonism towards each other, as also that it would increase litigation to an extent that would be thought objectionable by all, and would necessitate a large addition to the judical staff, involving considerable expenditure.

As regards the omissions, especially the first two I have mentioned, it seems to me most unjust to the zemindars that no real remedies are provided. Bread was asked for in 1877, the reasonableness of the demand was omitted by the Governments of Bengal and India, and now the zemindars are offered a stone instead. Again, as regards combinations to withhold rents where there is no dispute, the obvious remedy of making it compulsory on munsifs to award the 25 per cent. damages in such cases is not granted.

7. There is an important general question which the promoters and supporters of the main principles of the Bill may perhaps consider more worthy of attention than the extent to which it affects the zemindars, and the consequences which many expect from it in the matter of stirring up strife and ill feeling between zemindars and ryots. It is whether the Bill is likely to secure the main general object of its promoters.

It is understood that the main object of it is to improve the position of the ryots, the word "ryots" meaning in the main the cultivators of the soil, though the Bill allows some ryots to sublet. The question is whether the general effect of the Bill will not in all probability be the conversion of by far the largest and most important class of ryots into a class of very objectionable middlemen, who will be virtually in the position of petty zemindars, will give up cultivation as much as possible, and will sublet their lands to under-ryots, from whom they will screw out the highest possible rents, thus producing a class of miserable paupers in the place of the existing ryots of Bengal, about whose satisfactory circumstances as a class there is so much on record in the shape of the opinions of Government officers of widely divergent views ever since the time of Sir William Grey's Lieutenant-Governorship. In my opinion the above will be one of the most important results of the Bill if it passes with many of its main provisions as they now stand.

I placed the above view before the Conference with the following result :—

Mr. Bolton says—

"I am strongly of opinion that the Bill as it stands will materially improve the position of the actual cultivators of the soil, but I think that it would prove still more beneficial to them, if transferability and subletting were not formally recognized as incidents of the occupancy tenure. I agree with those who deprecate the admission of those rights into the substantive law on the round that it would encourage the growth of a large class of middlemen, and I would allow them to be exercised under the sanction of custom alone."

Mr. Livesay does not think the condition of the actual cultivators of the land would be changed by the Bill, but that it is open to the other objections of encouraging middlemen and subletting, though the professed object of it is to discourage them. Messrs. Newbery, Ruddock, Dalton, Oldham, and Tute concur with me in thinking that as the Bill stands it will have the effects stated; but Mr. Oldham thinks that if subletting in occupancy tenures is restricted by not allowing the occupancy ryot to recover a higher rent for the land he sublets than he himself pays for it, these effects may be prevented. Messrs. Newbery and Dalton think this restriction would improve the Bill much, but that it would not altogether prevent rack-renting, as the law might be avoided in case of a real demand for land. Mr. Dalton, however, thinks the Bill should not go lower down in the agricultural system than the occupancy ryot, that it should ignore the under-ryot, and make no provision for him. Messrs. Ruddock and Tute and I go further than Messrs. Newbery and Dalton. While we hold that the restriction suggested by Mr. Oldham is decidedly preferable to the Bill without it, we think that where a real demand for land arises, the restriction would be inoperative against the natural law of demand and supply, which will inevitably raise the rent to its market or competition value. In this view Mr. Westmacott concurs, as will be seen from the following passage from his letter :—

"In parts of the province in which there is a redundant population dependent solely on agriculture for its support, the actual cultivator is driven by competition to offer such a rent as he is often unable to pay, or the payment of which keeps him in a condition of hopeless pauperism. Theoretically, it appears benevolent to prescribe a maximum of rent which shall not be exceeded, and to protect the ryot who has certain occupancy rights from disturbance or excessive demand. In practice we may protect such a ryot, but by doing so we shall only encourage him to sublet and to become a petty landlord or middleman; and so far as I can see no legislation will prevent the actual cultivator from engaging to pay a rack-rent, if competition compels him to do so. We may prevent the present landlord from deriving any benefit from this competition, but we cannot prevent the cultivator from paying a rackrent,

or the man who holds the land from subletting it. In the districts in which I have served, the abundance of cultivable waste and the sparsity of population precludes all such competition. The cultivator is there protected by a natural law, and artificial devices for his protection are not required; while I believe that where they may be required, they will be inoperative to counteract the tendency of natural laws."

8. In the following paragraphs of this letter the use of the words "a majority of the Conference" or "the majority think," &c., without mention of names, means all who are not mentioned as holding a different opinion. And such words as "it is recommended" or "it is thought desirable" without mention of names, mean that the Conference are unanimous on the point.

In some instances members of the Conference have desired to state their views at greater length or in their own words, and in such cases separate notes are appended to this report.

9. When submitting his preliminary report in reply to my circular, Mr. Oldham wrote as follows:—

"My views have been almost altogether derived from my experience as District Judge and Manager of the Government and Wards' Estates in the Sonthal Pergunnahs, in which many of the provisions of the draft Bill have for some years been in force" And in his report he cited several occurrences in the Sonthal Pergunnahs in support of his views. On the opening of the Conference he explained as follows in reply to my enquiry:—Out of a population of 1,500,000, only half a million are Sonthals and a million are Hindoos and Mahomedans; so he thinks the working of the provisions there indicates how they would work in the rest of Bengal proper. Some of the main provisions in this Bill increased litigation in the Sonthal Pergunnahs considerably, for while formerly there were fewer disputes, and almost all of them were settled by the zemindars, a number of peasant proprietors were created who instituted title suits against each other for land or about boundaries. As regards the numerous civil suits, the Bill as it now stands would similarly create litigation; but Mr. Oldham holds strongly that if the transfer of occupancy holdings is not allowed, it will make all the difference, as that provision created the great mass of litigation in the Sonthal Pergunnahs by giving a value to occupancy holdings. The ryot borrowed money, and numerous civil suits were instituted by the lenders to recover such debts. If the holdings had not been made transferable, the money would not have been lent, and the suits would not have been instituted. Mr Oldham admits that the Bill is likely to create title suits elsewhere, as similar provisions created them in the Sonthal Pergunnahs, and the following table shews the litigation of this kind in 1883 in the Sonthal Pergunnahs and two districts of this division, the population of which are nearest to that of the Sonthal Pergunnahs:—

District.	Population.	Number of title suits instituted.	Number of executions of decree instituted.
Sonthal Pergunnahs	1,568,093	1,443	508
Dinagepore	1,514,346	190	113
Rajshahye	1,338,638	207	67

A majority of the Conference think that this result can only be expected, while Mr. Bolton doubts how far the Sonthal Pergunnahs can be safely taken as a guide. Any increase of expenditure in establishments caused by this litigation might or might not be met by the stamp revenue, as it may have been met in the Sonthal Pergunnahs, where the Stamp Law was introduced, not with that object, but in order to check litigation. Still some additional office accommodation will, in the opinion of the majority, be required, as it is already so insufficient that additional buildings have to be constructed for the Police and Registration Departments in many districts, and there remains the undesirable increase of litigation itself and consequent bad feelings. The majority considered the objections to the Bill to be important; but if, as is contemplated in the Bill, occupancy tenures are made transferable, then, taking the results obtained in the Sonthal Pergunnahs as a basis, the consequences of the Bill as a whole in the directions mentioned will, the majority think, be far worse and will be very serious indeed. Mr. Oldham estimates that about 80 per cent. of the civil suits in the Sonthal Pergunnahs are instituted by money-lenders to recover advances made to ryots, a large majority of whom have occupancy rights, and the following figures for the year 1883 compare litigation in the three districts just mentioned:—

District.	Population.	Number of civil suits instituted.	Number of civil executions of decree instituted.
Sonthal Pergunnahs ...	1,568,093	7,351	4,253
Dinagepore	1,514,346	5,188	2,518
Rajshahye	1,338,638	2,674	1,930

This indicates a still greater increase of litigation and ill-feeling, and a necessity for a large increase in judicial establishments, and of office accommodation in Bengal and Behar. The difference in litigation to be expected from the experience gained in the Sonthal Pergunnahs is not, it will be remembered, to be measured by the difference in the foregoing figures. The present percentage of civil suits in Dinagepore, Rajshahye, and other districts in Bengal and Behar that are instituted by money-lenders against ryots is owing to the want of security;

probably an unimportant percentage; and it appears that it might rise to about 80 per cent., as in the Sonthal Pergunnahs, if occupancy tenures are made transferable. I have no figures shewing the number of civil suits in the Sonthal Pergunnahs before such provisions as those in the Bill were introduced, but Mr. Oldham's statement that they greatly increased litigation seems sufficient.

Lastly, Messrs. Livesay, Newbery, Ruddock, Dalton, and Tute, and I would point to the following figures for 1883, as shewing that litigation for the recovery of rent has not been decreased by the provisions of the Bill, though Mr. Oldham here again thinks that without transferability there would not be nearly so many rent suits, as fewer money-lenders, who quarrel with the zemindars, would become occupancy ryots:—

District.	Number of rent suits instituted.	Number of rent executions instituted.
Sonthal Pergunnahs	3,892	2,805
Dinagepore	3,902	1,620
Rajshahye	1,978	853

CHAPTER I.

Preliminary.

10. *Section* 1 (3).—To prevent possible ambiguity, it is recommended that the Bill shall in such manner as may be thought most suitable make it clear that by the word "divisions" in the third part of the first schedule of Act XIV of 1874, the Julpigoree and Darjeeling districts are referred to, and are intended to be read in the Bill.

Section 3 (7). *Definition of Holding.*—A majority of the conference support a suggestion of Mr. Newbery's that some such words as "granted at one time" should be added to this clause ro prevent ambiguity. Messrs. Oldham and Bolton do not think the words necessary.

Paragraph 4 of the Bengal Government Circular.

11. *Point (a), section* 5 (3).—The addition to the clause of the words "or a revenue-free holder" is thought desirable, to which again Mr. Westmacott, Mr. Livesay, and I would add "or a farmer." Mr. Oldham, however, would prefer that section 5 should be drawn so as to describe, and not define, in which case he thinks neither addition would be necessary.

Paragraph 4 of the Bengal Government Circular.

See his separate note.

Point (*b*), *section* 5 (5)—Mr. Oldham says there are always, and Mr. Bolton* says there are generally, sub-tenants in holdings of 100 bighas and upwards, and both officers think the presumption a fair one. Mr. Livesay does not object to it. Mr. Newbery says the Rungpore zemindars are in favour of the presumption, *if* the owners of such tenures are registered as tenure-holders, and he would act on this view. Messrs. Ruddock, Dalton, and Jute think the presumption not a fair one, as the size of a holding does not necessarily indicate its nature. Mr. Westmacott says—

"The true distinction between a tenure-holder and a ryot is correctly stated, as the difference between a right to collect rents and a right to cultivate land. I think it a mistake to presume that a holding exceeding 100 bighas, even if sub-let, is not a ryot's holding. Such a presumption loses sight of the principle already enunciated, and is contrary to it. The question to ask is whether the land, when the holder or his predecessor in title entered upon it, was occupied by ryots or not. If it was, the holder obtained only a right to collect rents and cannot be a ryot; if it was not, the holder is, as regards the landlord, a ryot, even if the holding contains ten thousand bigahs. No such presumption as that proposed in section 5 (5) would be fair."

I think the presumption would not be a fair one, and that no presumption of the sort would be fair. All such presumptions should, in my opinion, be avoided as much as possible, as they give an unfair advantage to one party at the expense of the other, and it is in accordance with the most ordinary principles of English legislation that a man who asserts a special right should be bound to prove it.

Paragraph 4 of the Government Circular.

12. *Point* (*c*).—The concluding portion of section 5 (1) and section 37.

The two main points to which attention is directed are the objects of section 37, viz. to prevent as, much as possible, money-lenders from purchasing occupancy holdings, and to restrict sub-letting. The conference and Mr. Westmacott are unanimous in recommending the omission of section 37. As regards the first point, it is considered that, if transfers of occupancy holdings are allowed, it will be impossible to prevent their getting into the hands of money-lenders either by section 37 or by any other legal provision which Government would consent to enact. The following are the views that present themselves to the conference, though some are not concurred in by all the members, and to some of the considerations little weight is attached by some members. The section is thought unlikely to deter a money-lender from purchasing, because the disadvantages of conversion from an occupancy holder to a tenure-holder would be more than compensated for by the advantages of being no longer liable to distraint, or to the presumption clause, or to ejectment for using land in a manner that renders it unfit for the purposes of tenancy. Then, though all agree that it is desirable to exclude non-agricultural money-lenders, it is a known fact that in many districts the wealthier agriculturists are money-lenders, and in some districts this class of money-lenders greatly preponderate. It is of course most undesirable to prevent wealthy agriculturists from

acquiring occupancy holdings, and the exclusion of any class of purchasers would probably diminish the value of the holdings. The force of this last objection will depend to a certain extent whether the unanimous opinion of members of the conference that the Bill should not create rights of transfer finds favour; but at any rate there will be sales of occupancy holdings in execution of decree for their own arrears, and both zemindar and ryot might lose by the exclusion of a class of purchasers. As regards the restrictions on sub-letting expected from the section 1 of the foregoing remarks applies. If the holder thinks there are compensatory advantages in conversion to a tenure, he will not refrain from sub-letting, because that might result in the conversion, and some members of the conference think the section on the whole more likely to encourage it. Again, as the Government of India observe, it might be to the interest of no person to register the fact of half the holding being sub-let, and the difficulty of ascertaining if half a holding is sub-let or not is so great that it would operate to prevent most people whose interest it might be to register from ascertaining the fact.

The efficacy of the section is also diminished by the rejection of the proposal to equalise the rates of rent for occupancy and non-occupancy ryots. Altogether, the conference unanimously consider the section to be unworkable, especially in view of the difficulty of ascertaining if half the holding is sub-let. The conference will recommend what they think would be a really useful restriction on sub-letting when considering section 38.

Before leaving this paragraph of the Government circular, I would mention that as regards one of the objects of the section, viz. affording facilities for the acquisition of occupancy rights, some members of the conference, for reasons that will appear further on, do not consider such acquisition to be an unqualified advantage.

CHAPTER III.

13. Here enhancement is touched on for the first time in the Bill. This chapter applies to tenures only, but a majority of the conference consisting of Messrs. Tute, Dalton, Ruddock, Newbery, Livesay and myself, are strongly opposed to all arbitrary limits and percentages on the enhancement of the rents of either tenures or occupancy holdings, whether the limit be double or 25 per cent., or any other arbitrary limit, in excess of the existing legal limitations which are founded on some principle, *i.e.*, in excess of prevailing rates, increase in value of produce, increase in productive powers under certain circumstances, and an increase in area. The only addition to the existing limitations that Messrs. Livesay, Newbery, Ruddock, Dalton and Tute would make are the sections in the Bill providing that all rents fixed in suits must be fair and equitable, which Mr. Dalton considers to mean the prevailing rates as fixed by competition. I am opposed to this addition, because I find it difficult to conceive a case in which enhancement under the existing law (and the application of the High Court's principle of proportion where applicable) would not be in itself fair and equitable, while I think the addition would open the door for fanciful decisions of Munsiffs whether in favour of the zemindar or the ryot. The officers just mentioned, however, think that, as Mr. Livesay suggested, the Appellate Court is sufficient to correct such fanciful decisions.

Mr. Westmacott also disapproves of all arbitrary limitations. The majority think the existing limitations are sufficient; that any additions to them would be unfair to the zemindar; and that the arbitrary limits proposed in the Bill would do much harm by fostering a class of middlemen who, on their profits being increased by the arbitrary limitations, would be disposed to give up cultivation when possible, in order to become petty zemindars and to live on the rent profits of their holdings, which profits they would increase as much as possible by rack-renting under-ryots. It follows that the majority think that these arbitrary limitations would encourage sub-letting, which all are agreed should be checked and restricted, and on this particular point Mr. Oldham concurs with the majority, while Mr. Bolton gives no opinion about it.

Taking the enhancement provisions of the Bill as they would affect the three classes of zemindar, tenure-holder, and occupancy ryot, Mr Dalton observes as follows:—

"As regards enhancement between the three classes of landlord, tenure-holder, and occupancy ryot, the effects of the provisions of the Bill are apparently aimed at putting a stop to enhancement proceedings altogether. The limit up to which a tenure-holder may be enhanced is 100 per cent., that for an occupancy ryot is 50 per cent. The general effect of these provisions would be to deter either party—the landlord or the tenure-holder—from taking the initiative, the landlord waiting for the tenure-holder to enhance the occupancy ryot, and the tenure-holder for the landlord to bring a suit for an enhancement against himself.

"To take an illustrative case: A is a landlord, B a tenure-holder, C an occupancy ryot A gets Rs. 50 rent from B; B gets Rs. 75 rent from C. A sues for enhancement. He can only get what will leave B 10 per cent. after defraying costs of collection, say in all 20 per cent. profit on Rs. 75 rent from C; 20 per cent. on Rs. 75=Rs. 15. A can therefore enhance up to Rs. 60, obtaining, an increase of Rs. 10, and having done so, cannot enhance again for ten years. B now proceeds to enhance C's rent under section 44 (*a*), and gets a decree for the full limit of 50 per cent., making C's rent Rs. 112-8. Thus, while only paying A an increase of Rs. 10, B obtains an increase of Rs 52-8.

"Reverse the case. Say B sues C before he is sued by A and gets enhancement up to Rs. 112-8, now A sues B and obtains a decree for enhanced rent up to the full limit (100 per cent. less whatever must be deducted to leave B 10 per cent profit and 10 per cent.

collection charges) 20 per cent on Rs. 112-8 = Rs. 22-8, which would allow of the landlord enhancing up to Rs. 90 exactly, while the tenure-holder would be worse off than before he enhanced the rent of his occupancy ryot. Thus A would get an increase of Rs. 40, and B would suffer a decrease of Rs 52-8."

The foregoing illustration is of course based on the supposition that the rent is so low that the full enhancement allowable by the percentage limitations would be quite suitable.

Mr. Bolton thinks such inequalities may be found even now, but that they might be prevented in the future by the civil court officer not giving the full percentages of the enhancement under the "fair and equitable" provision. He and Mr. Oldham further do not think the way the illustration works out, important or objectionable.

In this view the other members of the conference cannot concur. They hold that, if a Munsif did not give the full enhancements in the cases stated, he would do what would be very wrong indeed. They think that some inequalities do exist at present owing to the special terms of old leases, which fix the rent to be paid by one class of tenant, and not that to be paid by another; but such agreements between parties are a very different thing to enacting legal provisions that establish such inequalities in the event of one party or the other suing to obtain what he is admittedly entitled to. The interests of the zemindar and tenure-holder would be so affected by the mere fact of which sued first that each would refrain from it, though admittedly entitled to enhancement. The majority think these result decidedly important and objectionable, and illustrate the weakness of any such arbitrary limitations as those provided by the Bill, and how badly they are likely to work.

Mr. Ruddock again, taking the limits of enhancement in the case of tenure-holders only, *i.e.* confining himself to Chapter III, puts the case of a lenient and rich landlord having for years contented himself with a rent of Rs. 100 when the prevailing rates would have given him Rs. 300. He comes forward to enhance, as he might admittedly have done justly years ago, and under section 8 could only get Rs. 200 instead of Rs. 300. The majority think this another useful illustration, as showing the inherent unfairness and unpractical character of such limitations, how badly the lenient zemindar would fare under them, and how they might induce zemindars, who would be otherwise disinclined to do so, to get as high rents as they can, lest they should suffer for their leniency in a time of pressure, while exacting zemindars would not.

None of these results would occur if the existing law is left as it is without the arbitrary limitations. Messrs. Bolton and Oldham think the limitations referred to wise, desirable, and necessary, and that it is necessary to impose limits on the zemindar's powers of enhancing rents. As regards the provisions of this chapter, which are approved by both officers, Mr. Oldham says—

"I concur in all the provisions of this chapter. I think the limitations necessary. I think the villages of the Sonthal Pergunnahs, which are all tenures, and the jotes of the Darjeeling Terai, which are nearly all tenures, good cases* in point. The rents of either have been and would be enhanced on the general considerations of clause 2, section 7."

See also his note of dissent.

I know nothing of the jotes in the Sonthal Pergunnahs. As regards the Terai jotes, they are in a Government estate settled for terms of years. They were overassessed chiefly because Government, on the information available, thought proper to fix certain rates when a general settlement took place. Had the jotes been subject to the provisions of the existing law as to enhancement, which I contend are sufficient, then the Terai jotes would not have been overassessed.

Mr. Bolton has recorded a separate note on this chapter.

14. *Section* 9.—Messrs. Oldham* and Bolton approve of this section. The majority of the conference think that, if the percentage or arbitrary limitations to enhancement in section 7 are retained in the Bill, this section 9 should be cut out, as it imposes another unfair restriction on the zemindar. If those limitations are cut out, then the majority would let section 9 stand.

* See his separate note.

Section 10.—The conference are generally in favour of this section; but I would add a proviso that in case of any sudden and unusual rise in value of land, such as might be caused by the construction and opening of a railway, an enhancement is allowable within the ten years.

15. *Section* 12.—I think that the payment of rent should be the first condition of tenancy, be the class of tenant what it may, and that the zemindar should have power to eject in case of non-payment of rent. This should be effected by a suit for ejectment in which a decree would be given by the court unless the tenure-holder could prove payment. On a decree being given, the six months' time allowed in Ireland under what is called "the equity of redemption" should be granted, and if during that period the tenure-holder paid the rent that originally fell in arrear, and that due for the six months or portion thereof, he should be reinstated. In this view, Messrs Ruddock and Tute concur, while Messrs. Livesay, Newbery, and Dalton think a power of selling the tenure on default sufficient. Messrs. Oldham and Bolton are opposed to the proposal, as by ejectment the status of the tenure would be gone, and they think it desirable to preserve the different existing tenures.

16. *Sections* 11, 12, *and* 15 *to* 19—A majority of the conference think "permanent tenure" had better be defined in the Bill, as questions might arise as to what kinds of tenures are to be considered permanent. For instance, one member thought that only tenures

paying rents at fixed rates are referred to, and another that the Rungpore jotes which, though liable to enhancement, are heritable and transferable, and are held without limit of time, may also be called permanent tenures. Mr. Oldham dissents, thinking it unnecessary to define them.

17. As regards the call made in the second clause of paragraph 5 of the Government letter, enhancements in this division are almost always made by private arrangement between the zemindar and the ryot, whether the latter is a tenure-holder or another class of ryot. In addition to this, there are scarcely any tenures in Dinagepore, and the jotes of Rungpore and Julpigoree are a special class. No information of the least value as to the workable character of the provisions referred to can be obtained on experience of enhancements made out of court in this division.

CHAPTER IV.

Paragraph 6 of the Bengal Government Circular

18. *Section* 64(2.) *The* 20 *years, presumption.*—The reply to the question whether landlords in this division really experience any practical or reasonable difficulty in rebutting the presumption when it is unjustly pleaded is as follows; but taking the division as a whole, enhancement suits are rare, rents being more frequently raised by mutual agreement when they are enhanced at all. In the Dinagepore district the presumption is invariably pleaded in one munsifee, but the plea is never followed up; in two other munsifees it is frequently pleaded and never rebutted. In Rajshahye it is pleaded, and zemindars find a difficulty in rebutting it. In Pubna the ryots frequently plead it, but seldom succeed in establishing the fact of having held at an unchanged rent for 20 years, and thus the zemindars have seldom to rebut the presumption. In Bogra zemindars experience practical difficulty in rebutting the presumption. In Rungpore the Collector could not hear of an instance of its being pleaded for some years past, enhancements being effected out of court. Mr. Dalton has had short experience in Julpigoree, but thinks the presumption difficult to rebut in the case of an honest zemindar, or those with small estates and establishments, and easy to rebut when the zemindar is dishonest. Mr. Oldham knows of no instance in which the presumption was pleaded to a great extent in an estate which had changed hands, and in which the owner had a difficulty in getting the papers. In the year 1867, I held an additional Judgship for about seven months in Nuddea and Jessore, and for the first six months my time was wholly devoted to hearing appeals from decisions in enhancement suits. The presumption was frequently pleaded, and generally speaking established. Writing from memory at this distance of time, I will only say that a strong impression of the difficulty of rebutting the presumption, owing to estates changing hands, and to records not being preserved, whether estates changed or not, was left on my mind.

Mr. Westmacott writes—

"I consider that the statutory presumption of 20 years' holding has borne most unjustly upon zemindars, and protest strongly against its being allowed to have any force in the future. This presumption was first created by Act X of 1859, and has done mischief enough already, having been allowed to create rights against the zemindar which have in many cases been undoubtedly unjust. In this year, 1884, it would be most unjust that a ryot who can show that he has held at a fixed rate since 1864 should be presumed to have held at that rate ever since the Permanent Settlement. Unless he has obtained a registered lease or a judicial declaration, or some other formal recognition of title, during the 25 years which have elapsed since the enactment of the presumption, I think the burden of proving any right to hold at fixed rates should be thrown on him. I do not think the presumption should be retained at all. If the rights of which it was intended to facilitate the proof have not been proven are this, I do not believe in their existence."

On a consideration of the published papers stating the objections to, and advantages of, the presumption, of information obtained, and of personal experience, the conference unanimously recommend the abolition of the presumption on the following conditions suggested by Mr. Bolton, that the ryots be allowed to establish the presumption within two years from the passing of the Bill, either by the admission of the zemindar in a registered document, or by the ryot instituting a suit in a civil court to establish it.

It is claimed for Mr. Bolton's proposal that it will have the advantage of preventing in the future an ordinary occupancy ryot from unfairly claiming the privileges of a ryot holding at fixed rates, while it will give an opportunity once for all to ryots who actually have the right to hold at those rates to establish that right either under a private agreement with their landlords or under a decree (Chapter IV). Mr. Bolton has recorded a separate note on this question.

If it should be determined to retain the presumption, then Messrs. Livesay, Newbery, Dalton, Tute and I would require the ryot to show the 20 years' unchanged rent from 1839, *i.e.* for 20 years before the passing of Act X of 1859. If the presumption is retained, Messrs. Oldham and Bolton would make the presumption run from the passing of the Bill.

CHAPTER V.

Paragraph 7 of the Government Circular. The settled ryot.

19. *Occupancy ryots. General.*—Though the Government circular says the definition of the settled ryot is no longer open to discussion, the conference hope that the Legislative Council will not take this view, but will in justice be ready to consider opinions on this as on the

other points in the Bill, which may be considered of importance by those consulted. It is never too late to remedy what is an error, and the conference hope that Government will send up their views on this as well as on all other questions. In this instance, though the conference includes two of the staunchest supporters of the main provisions of the Bill which Government favour, there is, with one slight modification, complete unanimity in thinking that the words "or estate" should be cut out whenever it occurs in section 26. This opinion was expressed by every district officer in this division in his preliminary report without my suggesting or referring to it in any way, and certainly occurred to each and all separately. The village should, in the opinion of the conference, be held to be the survey village, which is in some instances a very large area indeed, and the limitation of the village as the area within which rights should accrue is considered to be in accordance with long-established custom and tradition all over the country. The only modification suggested is that Mr. Bolton* would allow the right of occupancy or settled ryot's privilege to accrue in land situated within two miles of the village, as well as in the village itself. His wish that all ryots should become settled ryots leads him to this opinion. The unfairness of allowing the right to extend to an entire estate under the provision whereby an original divided under the partition law into several separate estates, will be seen from the following illustration which I placed before the conference :—

* See his separate note.

"Take the case of a parent estate in 1854 partitioned in 1855 into four estates W, X, Y and Z; when the Bill passes, a ryot has land in Z, having held it for one year, and having held other land for eleven years in Y, which he left of his own accord. Supposing that Government decide on giving him an occupancy right in the land in Z that he holds at the time of the passing of the Bill, is it fair to provide that, if the proprietor of W lets land therein to that ryot fifty years hence, the ryot will immediately on entering have a right of occupancy in that land, merely because it was in 1854 part of the parent estate? Would this be fair to W?"

20. It will be convenient to deal with other points in section 26 before considering section 25.

Clause (2).—Messrs. Livesay, Oldham,* and Bolton think that, as a representative of the zemindars' said 90 per cent. of ryots have occupancy rights, it is fair to presume that the land has been held for 12 years. The majority think the presumption unfair to the zemindar, and that on general principles the asserter of the right should be required to prove it, if it is denied.

* See his separate note.

Section 26(3).—Reading together this clause and section 25, the following case was suggested by Mr. Tute :—

A ryot held three bighas for three years, three other bighas for three other years, two other bighas for three other years, and three other bighas for the three last years, making a total of 12 years, in the course of which four different plots were held at different times, three plots were relinquished in the course of the 12 years, and one plot of three bighas only held at the end of the three years. Messrs. Oldham and Bolton think the Bill only gives the ryot a right of occupancy in the three bighas held at the end of the 12 years, but the majority think this should be made clearer if 26(3) is retained at all. As regards this question, Mr. Westmacott says—

"I consider it unjust that rights accruing in one plot of land should extend to another plot. I believe this expedient has been decried to checkmate zemindars who have endeavoured to prevent the accrual of rights of occupancy by moving ryots from one plot to another. I am of opinion that, where the hold of ryots on the land is so slight as to have rendered this manœuvre possible on the part of the landlord, there is no such right of occupancy as could be recognised by any traditional feeling on the part of the people. In the eastern districts the landlords are too glad to obtain and keep solvent ryots to worry them by moving them about, and where, as is apparently the case in Behar, the pressure of population on the land has prevented the accrual of rights of occupancy, I do not consider it feasible to counteract such a natural law by artificial legislation. Moreover, to attempt to meet a petty trick and counteract it by means of another seems to me beneath the dignity of the Legislature."

Mr. Newbery and I are disposed to concur in this view, but on the whole think that if on full consideration of the opinions of Government officers with Behar experience, and of the representations of the zemindars, it is considered necessary to enact any such provision, it should be done in a separate chapter for Behar, and should not apply to Bengal, and that in the latter Province the existing law should stand, a right of occupancy only accruing in the particular plots of land held continuously for ten years. Messrs. Livesay, Dalton, Oldham, Tute and Bolton would give the right in the particular land held at the end of the 12 years, *i. e.*, in the case stated in the three bighas held in the twelfth year, and Mr. Ruddock would give it in the minimum area held at any one time during the 12 years, *i. e.* in two bighas only. Mr. Tute suggests that the provision be thus worded; the final proviso being of course a saving of his opinion in favour of perfect freedom of contract :—

"Every settled ryot who has paid rent in any mouzah for twelve years shall have rights of occupancy in any land which he may hold at the end of that twelve years, provided that no registered contract to the contrary exists."

Messrs. Livesay and Dalton concur, and if a separate chapter for Behar is not enacted, Mr. Newbery accepts the amended proviso, while I agree with Mr. Ruddock.

Section 26 (6).—Subject to what has been said above, if this clause means that the ryot does *not* retain a right to return to the identical land he left, it is thought there is no objection to his retaining the status of a settled ryot in the village for a year after he leaves it.

Section 26 (7).—This clause is accepted subject to the amendments in section 96, of which the principal is that the period allowed for re-entering shall not exceed one year.

21. *Section* 25—Mr. Westmacott says—

"I think it unjust that a ryot should have a right of occupancy in all land he holds, and I do not think the words "or a ryot" sufficiently clear to exclude such temporary holding as those of the *jotedars* in Noakhally, who have certainly no right whatever to the lands beyond the one season for which they agree to cultivate it."

In this case Messrs. Oldham and Bolton think the section on custom would prevent the occupancy right accruing in the land so held for one year only. If it would not, Mr. Bolton would give the occupancy right in it, and Mr. Oldham has not considered the case. The majority would distinctly prevent its accruing in such cases.

Section 25 (2).—The following case suggested itself to me. A ryot is lawfully ejected by the civil court during the period mentioned. Will not the clause give him a fresh right in the land? Mr. Bolton proposed to consider the point. Mr. Oldham thinks the clause would not give a fresh right; the majority having doubts recommend that a proviso be added to prevent it. Again, during the period mentioned, a ryot holds 5 bighas and surrenders them, holds 5 other bighas and surrenders them, and has a third lot of 5 bighas when the Bill passes into law. Will not this clause give him a right of occupancy in the 15 bighas and not in the five? The views of the conference in the other case hold good in this one; *i.e.*, Mr. Bolton proposed to consider the case, Mr. Oldham thinks the right will not accrue in the 15 bighas, and the majority (always subject to what has been previously said on the general question) would make the Bill distinctly provide that in such a case the right will accrue in the 5 bighas only.

22. *Section* 27.—The views of the conference on the definition of "settled ryot" hold good here, and all mention of the estate should be cut out.

In reply to the question asked by Government in paragraph 7 point (*b*), butwarahs so seldom occur in this division that no opinion based on them can be given.

23. *Section* 28.—This provides that one person in the whole world, and he the person who, it seems to some members of the conference, has *primâ facie* a preferential claim to it, shall not be allowed to acquire a right of occupancy in a holding. Messrs. Ruddock, Tute and I think this very unjust, and would allow the zemindar to acquire the right like all other people in the world, as such barring of one person is almost suggestive of unfairness on principle. Mr. Dalton would allow the zemindar to acquire it, on the understanding that a ryot to whom the holding is afterwards let may acquire the right also on occupation for 12 years. Mr. Newbery thinks it unnecessary to allow it, and that the section may stand, *because*, when the zemindar gets the holding into his hands, he can do exactly what he likes with it, and so the right of occupancy would really be of little or no use to him. Mr. Livesay would allow the section to stand *if* section 29 is cut out, but not otherwise. Mr. Oldham* approves of the section, because on his experience in the Sonthal Pergunnahs a zemindar might let the holding to a ryot at a higher rate and in this way raise the prevailing rate. The majority observe that this would have to be done by collusion with the ryots in order to raise the rates fictitiously, and while they doubt if, taking these provinces generally, any such number of holdings could get into the hands of a zemindar as to enable him to raise the rates in this manner, if he did get them into his hands he could not persuade a sufficient number of ryots to pay excessive rates at their own loss to affect the prevailing rates, and that, if in fact a zemindar did get such a sufficient number of holdings, and did let them to a sufficient number of ryots, to affect the question of prevailing rates, it could only be taken as a positive proof that the rates paid by other ryots were too low, and ought to be raised to those agreed to by such a number of ryots. Mr. Bolton would retain the section. He thinks that, "if zemindars were permitted to acquire a right of occupancy in lands of their own estates, defaulting zemindars would frequently retain a connection with their estates as occupancy ryots, after sales for arrears of revenue, and might sometimes prove a thorn in the side of the new landlord. The knowledge that the old landlord is likely to remain on the estate would also frequently deter purchasers from coming forward, and estates would thus be sold at an insufficient price."

* See his separate note.

The majority, which includes Mr. Oldham, on this point do not concur in this view, as they do not see how a zemindar, who becomes an occupancy ryot, could do more against the new zemindar than any other occupancy ryot.

Mr. Westmacott, like Mr. Newbery, sees no objection to the section, and says:—

"It is quite enough that all rights as against himself should be extinguished, but I would allow him to let the land so bought upon temporary leases, and prevent the accrual of rights of occupancy as against himself. For instance, a far-seeing landlord, who is aware of a project for making a railway through his estates, foreseeing a rise in the value of land, may very justly let land, of which he has bought up the occupancy rights, on five-year leases, with a view to re-letting on advantageous terms on the expiry of the lease."

24. Some members think sections 28 and 29 are either conflicting or obscure, and that clauses 1 and 2 of section 29 are in conflict. Mr. Ruddock puts the following case, which seems to be to the point:—A. has a proprietor's share in an estate, and acquires a right of occupancy in land. The estate is subsequently divided under the butwarah law. Ought he to retain his occupancy right? A majority think it would be very unfair to give a man who begins life as a ryot, and becomes a zemindar afterwards, a right which is denied to another man who has always been a zemindar; and Mr. Oldham thinks this also, but his reason for rejecting clause 1 of section 29 is that it is superfluous. If a man wishes to transmute himself from ryot to zemindar, still remaining partly a ryot, he thinks the law should not concern itself in the matter. Mr. Bolton also rejects clause 1, and the Conference are unanimous in recommending its omission. Clause 2 is approved.

The concluding portion of paragraph 7 of the Government circular.

25. *Section* 30.—With this section the Conference considered Chapter XII, about making a record of proprietor's private lands. A majority concur with Mr. Tute in recommending the omission of the concluding words of the section after the word "kamat," their opinion being that what is to be recorded under the limited view of what are private lands taken in the Bill should be guarded from the accrual of a right of occupancy, whether held under a lease of any kind or not. Mr. Bolton* dissents, and would leave the section as it stands.

Paragraph 24 of the Government circular.

* *See* his separate note.

A majority think the presumption at the end of clause 2 of section 138 unfair, and would omit *it*. Messrs. Oldham† and Bolton would retain it.

† *See* separate note.

26. *Section* 31, *clause* (*a*)—All except Mr. Bolton‡ would omit the first-half of this, as it might injure the zemindar and be against custom. For instance, the treatment of land for mulberry cultivation cannot be said to render it unfit for that particular purpose of tenancy, but still it injures the land for all, or almost all, other crops, and is never so treated without the consent of the zemindar, who demands a high rent in consequence.

Paragraph 8 of the Government circular.

‡ *See* his separate note.

Clause (*b*).—Here the sections about improvements and paragraph 19 of the Government circular were considered. All but Mr. Bolton§ would omit sections 87 to 94, as being of no practical utility and over-loading the Bill. In this Mr. Westmacott concurs, and says that the question of improvements is regulated by well-known local customs. The only case in which Mr. Oldham has known an improvement objected to was a so-called measure in which he stood in the zemindar's place and objected. He considers all the sections distinctly mischievous, and likely to create a strife between zemindars and ryots. If the sections are retained, a majority agree with me that nothing should be carried out as being an improvement to carry a claim to compensation unless the zemindar has had an opportunity of objecting, as in Ireland many so-called improvements actually decrease the value of the holding or land, and such might be proposed in this country. A majority agree with Mr. Newbery in thinking this view should be carried out by providing that no compensation shall be payable unless the improvement is registered by the Collector before the work is done, or unless the zemindar's consent is obtained in writing. Mr. Bolton thinks this unnecessary, and Mr. Oldham gives no opinion. Opinions differ as to whether what is called a cutcha well should be considered as an improvement. When properly made with good pottery rings, and when new, such a well is of use, but it will fall in soon, unless properly constructed and constantly attended to and kept in order.

§ *See* his separate note.

Mr. Newbery observes that "with the characteristic one-sidedness" of this Bill there is no corresponding provision for a penalty or damages in case of a ryot over-cropping and letting half the holding run to jungle. In this remark all but Messrs. Oldham and Bolton concur.

Section 31 (*c*).—As in other places in the Bill, I should prefer the omission of clause (*c*), lest the fancies of Munsifs should lead to injustice to either side, and because I think the existing law provides sufficiently for the settlement of the rent of occupancy ryots, though it requires some aid from the executive in the way of facilitating the application of that law. The majority are in favour of the clause.

Section 31 (*d*).—I hold that the payment of rent should be the first condition of tenancy, and that the occupancy ryot should be liable to ejectment for non-payment with a six months' equity of redemption, as in the case of default of a tenure-holder. The majority think that the tenure being made saleable for its own arrears the zemindar has a sufficient remedy. I cannot agree in this, as a sale of the holding might bring in a tenant who would be very obnoxious to the zemindar. Section 33 is insufficient to prevent this practically, as by collusion a bid might be made in the knowledge that the zemindar would buy in possession in order to keep out the obnoxious man) that would be much above the real value of the holding, and thus the zemindar would have the choice of paying the out-going tenant much more than the rent he owed to the zemindar, or of letting in an obnoxious tenant. For this reason I think the remedy of sale insufficient, and that the zemindar should have the choice between ejecting and selling.

The majority support Mr. Oldham's suggestion that an additional ground for ejectment !!! should be added under (*d*, viz. when a ryot fraudulently denies the zemindar's title. He

knows a case in which a third party promised a reduction of rents to ryots generally if they supported his claim and denied the title of the zemindar in possession, which they did. The provision was in that case applied in the Sonthal Pergunnahs with excellent effect. Mr. Bolton dissents, as he thinks the addition might be used by two artful and collusive zemindars to eject occupancy ryots.

Section 31(*e*).—Mr. Westmacott writes:—

"The presumptions in 95 (3) (*a*) and (*b*) are unfair. Many ryots hold more than one holding, and taking a new holding by no means implies giving up another. Ceasing to reside in the mouzah, also by no means indicates abandonment of a holding. I consider these provisions most unjust to the landlord."

I overlooked these remarks until the sittings of the Conference were over, and the members had no opportunity of considering them, as nothing in regard to the section occurred to any member at the time. On consideration, I agree with Mr. Westmacott.

Paragraph 8 of the Government circular continued.

27. *Section* 31 (*f*).—Here comes in the important question of transferability of occupancy holdings. The Conference are unanimous in thinking that, not merely in this division (in which there is nothing to specially affect the question), but all over the country, no means can be devised whereby holdings can be made transferable to the cultivating classes only. It is considered certain that if a ryot is allowed by the Bill to sell his holding, or if it is declared saleable in execution of decree for debts other than its own arrears, it will be absolutely impossible to keep out money-lenders. It is, as has been already stated, to this transferability that Mr. Oldham attributes the mass of litigation, the strife and ill-feeling in the Sonthal Pergunnahs; and he thinks that if the clause stands, the Bill will assuredly encourage sub-letting and create a most undesirable class of rack-renting middlemen. The Conference are unanimous in recommending very strongly that no such right of transfer be created by the Bill. Where it exists already, as in the case of the Rungpore jotes, it should not be interfered with, and should be recognized by the Courts as a custom under section 217, and in order to make it clear that where the right now exists it is not barred, Mr. Bolton proposes to add an illustration to that section, which will be stated in due course. The Conference are unanimous in recommending that an occupancy tenure be only saleable for its own arrears, and that it be heritable under the ordinary Hindu and Mahomedan laws of inheritance. As regards power of transfer by gift and a right to bequeath, the following opinions are held:—Messrs. Ruddock and Bolton would allow both in the case of blood relations. The majority would allow neither. Mr. Westmacott expressed no opinion on this clause, but his remarks on the subsequent sections show that he is against restrictions on transfer. He had not, however, the advantage of hearing the results obtained in the Sonthal Pergunnahs, which, for instance, finally settled my own opinion on the point, though it had inclined the other way, provided the zemindar was secured against objectionable tenants. If this and the exclusion of the money-lender could be secured, I should have no objection to occupancy holdings being made transferable. Mr. Bolton suggests that the substitution of the word "or" for the word "and" between the words "transferred" and "bequeathed" would be a verbal improvement.

28. *Section* 31 (*g*).—The Conference are unanimous* in recommending that this clause be omitted. They would do nothing to create or to encourage sub-letting.

* *See* Mr. Bolton's separate note.

29. *Sections* 32 *to* 36.—Restrictions on transfer. Under the views expressed in regard to 31 (*f*), section 32 would be omitted, and section 34 also, as a mortgage is covered by the definition of transfer.

Section 35†—Would stand or fall according as the power of gift stands or falls.

† *See* Mr. Bolton's separate note.

Section 36.—Would only apply to the section left in, viz. 33.

Mr. Westmacott is generally opposed to restrictions on transfer, as he thinks they diminish the value of the holding and decrease the security for the rent; but as landlords value the right of pre-emption, he would allow it, though he thinks ryots may by collusion with ostensible purchasers or mortgagees nullify the clause by making it appear they have been offered a price much beyond the real value of the holding. He looks on the sections as almost useless.

I concur in his remark about section 33, and it is for this reason that I have recommended that the zemindar shall have the choice between ejecting a defaulting ryot or of selling the holding in execution of decree.

30. *Section* 37—Has been already dealt with, and it is hoped it will be omitted. If it is retained, it is suggested that the word "other" be substituted for the word "domestic" in clause (*a*), so as to be more comprehensive in the case of real disability to cultivate.

31. *Section* 38.—All are agreed that this should be omitted, as they would do nothing to create or encourage sub-letting, though the custom should not be interfered with where it exists. In order to carry out this view and to check sub-letting, Mr. Oldham suggests, on the ground of his experience of its actual working in the Sonthal Pergunnahs, that a section be substituted for 38, providing that "when an occupancy ryot sub-lets his holding, or any part thereof, he shall not be entitled to recover rent at a higher rate for such holding or part than that at which he himself holds; and if in consequence of such sub-letting he remains out of possession of his holding or any part thereof for 12 consecutive years, his rights in such holding or part shall cease." Mr. Oldham would, however, retain the proviso to the

section with the amendment of "other" instead of "domestic," just suggested in the case of section 37, if that section is retained. This proposal is strongly recommended by the majority as a check on sub-letting, though some members think the natural laws of competition likely to prevail against it where there is a real demand for land, and they also support it because, as Mr. Newbery observes, if 12 years' possession gives a right of occupancy, it is only fair that 12 years' voluntary dispossession should cancel it. Mr. Bolton dissents, and records a separate note.

Paragraphs 9 and 10 of the Government circular.

32. *Enhancement of rent of occupancy tenures.*—Here the objections already advanced on the part of six out of eight members of the Conference, and on the part of Mr. Westmacott, against all arbitrary limitations of enhancement by percentages apply at least as strongly as in the case of enhancing the rent of tenures. The majority consider the limitations of enhancement in the existing law sufficient, except that some think there is no harm in adding that the rent shall be fair and equitable, which Dalton understands to be the prevailing rate as ascertained by competition.

* *See* his separate note.

33. *Section* 41.—Messrs. Oldham* and Bolton are strongly in favour of this section, thinking that ryots require such protection, and the majority of six are as strongly opposed to it, would omit it altogether, and would leave the right of private contract unfettered. Mr. Livesay thinks that contracts for enhancement should be registered.

Paragraph 11 of the Government letter.

† *See* his separate note.

34. *Section* 42.—Mr. Oldham† would omit the exception at the end of clause 1. He approves of the section so altered as being in accordance with the principle of not giving a zemindar opportunities of raising rent and thereby creating a fictitious prevailing rate. In this Mr. Bolton concurs, but he would substitute for the exception, which Mr. Oldham would omit, the words "until such rent has been enhanced by a decree under this chapter." The other six members consider the section most unjust to the zemindar, and are opposed to all such restrictions. As the section stands, and unless it is altered as suggested by Mr. Bolton, it would give the settled ryot a right to hold at fixed rates, as he has only to refuse to execute any contract at all to be free from all liability to enhancement. The zemindar could gain nothing by turning out the ryot and putting in another, though the section might *prima facie* tempt him to do so, and I do not see how the result of the land being thereafter held for ever at fixed rates could be averted. Special attention is requested to this point. But if the section is amended as suggested by the minority, even then it will, in the opinion of the majority, be grossly unjust to the zemindar, as it will give the settled ryot a right of occupancy in the land immediately he enters on it, and the majority think this extension of the settled ryots' rights to the loss of the zemindar quite unjustified by the reasons advanced in support of the section.

Mr. Westmacott writes:—

"I cannot see any objection to making an occupancy ryot pay the rent which a non-occupancy ryot has found that he can afford to pay for the same land. Indeed, the idea of a ryot being an 'occupancy' ryot, with special privileges, as regards land which he has not been occupying, is to me absurd. Let a man have privileges as to the holding which he and perhaps his father and grandfather have been cultivating for many years; but if he takes other land, let him pay the rent the land can afford to pay. I think the Bill appears to introduce on theoretical grounds entirely new conditions of tenancy, opposed to all the traditional feelings of the people, injurious to the landlord, and not beneficial to the actual cultivator. If rents are artificially kept below a certain point, they will introduce a non-cultivating class of tenure-holders, who will sub-let to actual cultivators who agree to pay the market value of the use of the land.

A ryot cultivating land for one season only will always pay a much higher rent than he would agree to pay annually for a term of years, taking all the risks of bad seasons. If his one season turns out a bad one, he loses nothing, and the landlord gets no rent from him. The permanent ryot will only agree to pay such rent as he can afford to pay on an average of seasons, but the landlord's income from such ryots is far safer, and in the long run far larger, than from annual tenants, and no landlord is fool enough to get rid of solvent settled ryots in order to let his land by the year"

34½. Before leaving section 42, I have to reply to the question raised in paragraph 11 of the Government circular.

When Government raise the question whether there is "danger" of section 42 raising the prevailing rate for occupancy ryots, the majority understand Government to mean raising the rate in an objectionable manner, as opposed to the raising of it by the action of natural laws, such a rise in the value of land, as the majority are sure that Government would not interfere with the raising of the rate in the last-mentioned manner, which is simply the effect of general progress and improvement in the country, and especially in the condition of the agricultural classes. Thinking there is some danger of the prevailing rate being raised in an objectionable manner by the section as it stands, and which limits the rent that the zemindar may demand, Government wish us to consider whether some further restriction in excess of that limitation should not be enacted against the zemindar. There are thus three phases to be considered: *first*, the existing law or conditions under which there is no limitation whatever on the amount of rent a zemindar may demand when he lets his land; *second*, the section in the Bill limiting the demand; and *third*, the idea that occurs to Government of enacting something still more detrimental to the zemindar. While Messrs. Oldham and Bolton are

in favour of the section with the amendments already proposed by them, and consequently do not see the danger apprehended by Government from it, the majority, for the following reasons, think there is no danger whatever of an objectionable raising of the prevailing rate under the first phase, *i.e.*, under existing conditions, under which no restriction whatever is imposed on the zemindar, and it follows that much less do they think there is danger under the section, and that there is any need for any further restrictions. It seems to them that, if there was any such danger, it would not be a matter of apprehension only, but a matter of fact, whereas Government do not mention any instance of the power which the zemindar now exercises of demanding what he likes when he lets land, having, as a matter of fact, had the effect of raising the prevailing rate in an objectionable manner, and if instances of this had occurred, the supporters of the Bill would assuredly have reported it to Government, and the instances would doubtless have been mentioned or referred to in the Government Circular in support of the proposal to impose a restriction in excess of the section. It seems to the majority that the absence of known instances of what Government apprehend is strong evidence that the apprehension is groundless, and not only that, but that it also strongly supports the view of the majority that the section should be altogether omitted, and the present conditions allowed to go on working as satisfactorily as they now do without imposing any new restrictions on any one. Next, the majority are confident, and in this they think Government will agree with them, that the subletting of a small number of holdings could never affect the prevailing rate paid on a large number; and lastly, they think that, if the zemindar does let a large number of holdings to settled ryots at rates in excess of those paid by other settled ryots for lands in which they have right of occupancy, then it is an incontestable proof that the rates paid by the latter set of ryots are too low, and should no longer prevail, for a number of ryots would never pay the higher rate unless the land were worth it. In short, it seems to the majority that if Government will only let well alone by omitting the section altogether and imposing no restriction whatever on the demand of rent, in such cases then not only will there be no such danger as Government apprehend of the prevailing rate being raised in an objectionable and fictitious manner, but, on the contrary, natural laws will work so as to settle the prevailing rates in a most desirable manner as the country progresses, and the general condition of the occupancy ryot improves.

Paragraph 9 of the Government circular.

* *See* his separate note.

35. *Point* (*a*) *Section* 43.—*The prevailing rates.*—Messrs. Oldham and Bolton would abolish this ground of enhancement altogether. Mr. Oldham* says that all applications for enhancement on this ground that came before him as Judge in the Sonthal Pergunnahs were practically fictitious and collusive rates. The ryots of a whole pergunnah assented to a high rate on the zemindar consenting to abandon indigo cultivation, and the pergunnah was settled accordingly. Some years afterwards, the zemindar's successor sought to enhance in the next pergunnah, citing as a prevailing rate the one so specially raised. Mr. Bolton† also strongly advocates the abolition of this ground. He cites no specific instances in which fictitious rates were put forward, though he goes so far as to say that landlords have "commonly succeeded in altering the prevailing rate" by coercion and collusion. In the opinion of the other six members, the instance cited by Mr. Oldham is a very insufficient reason for abolishing this ground of enhancement. It was an attempt to establish as correct what was incorrect, it did not succeed, and no more would any other such attempts succeed. The point, in the opinion of the majority, is whether zemindars have established fictitious rates as a prevailing one, and this could practically never be effected, as it is easy to disprove that a rate prevails when it does not really prevail, and as for a zemindar persuading a large body to pay rents in excess of the prevailing rate for land under the same circumstances and conditions, the majority consider that a practical impossibility. Mr. Tute says he has not yet met any set of ryots so devoted to the neighbouring landlord as to agree to pay enhanced rents to enable him to enhance on his own estate. As regards experience of fictitious and collusive rates, Messrs. Tute, Dalton and Newbery have never known any to be advanced. Messrs. Livesay and Ruddock and the Bogra Munsif have known fictitious rates to be advanced in the sense that the zemindar advanced rates as prevailing rates which were paid by a few ryots only, and the Munsif says that he has found ryots do exactly the converse of this. No one knows of a case of fictitious or collusive rates being established as prevailing rates. Mr. Newbery observes that zemindars cannot combine to prove falsely high rates, while ryots can and do combine to prove falsely low rates. My experience, gained in trying enhancement suits for six months, was that no collusive rates were ever advanced, and that fictitious rates were only advanced, as they were in some cases, by both zemindars and ryots, in the sense that they were higher and lower than the rates that I found to be the really prevailing ones. Mr. Tute cites the cases in which Government as zemindar raised the rates in Midnapore, Julpigoree, and Darjeeling, and asks why other zemindars should be deprived the advantage of the rates fixed by Government officers.

† *See* his separate note.

Six members are unanimous in thinking that the abolition of the ground would tell very hardly and unfairly on zemindars, as it is the only one easy to prove, and that, if it is abolished, then the Bill will materially increase instead of facilitating enhancement in cases where the zemindar is admittedly entitled to it.

Mr. Westmacott sees no objection to the prevailing rate, though he says—

"I think far too much importance has been attached to the prevailing rates as a standard. I have found it difficult and well nigh impossible to do justice by the application of any

such standard. If the prevailing rate is one which has prevailed ever since a day when rice was sold at 40 seers the rupee, it is certainly an unfair rate when rice is sold at 25 seers the rupee. I do not think that either landlord or tenant would suffer from the abolition of this ground of enhancement."

As regards clause (*b*), crops other than food-crops must be taken into account, as will be stated when dealing with priced lists.

36. *Section* 44.—From what has just been said, it follows that Messrs. Oldham and Bolton would omit this section, and that the majority would omit clause (*a*).

37. *Section* 45.—All but Messrs. Oldham and Bolton would omit clause (*b*) on the general grounds and principles before stated. In recommending a rise in prices as a ground for enhancement, Mr. Oldham mentioned that five maunds of rice were obtainable for a rupee in Kendraparah about 1864, and only 16 seers in 1884, which Mr. Tute and the others of the majority think a strong argument against the four annas limit of enhancement.

38. In connection with section 45, section 52 and the matter of priced lists have to be considered. Paragraph 14 of the Government circular. The result of the enquiries on the points in regard to which Government desire information is as follows:—Excepting in Pubna, where Mr. Bolton obtained prices in a few instances from wholesale dealers, the District Officers of this division agree that priced lists for fifteen years cannot be got, or that, if available here and there, they would be unreliable. Most dealers do not keep papers on the subject for more than ten and five years, and some not so long as five. Messrs. Livesay, Ruddock, Dalton Oldham and Bolton, think prices of five years could be obtained that would be useful as a guide. Mr. Dalton thinking they could be obtained to a limited extent only. Messrs. Newbery and Tute think they could be obtained, the former officer with the qualification that they would be of some little use only, and Mr. Tute believing they would be unreliable. I do not think they would be sufficiently reliable, and would not use them. All are agreed that the prices now published, which are drawn up by the police and the Collectorate Nazirs, are not sufficiently accurate for the purposes of the section. A majority agree with me in thinking that, if Government make it an object to collect accurate information as to prices in the future, confine to a limited number of suitable places in each district, and issue full and careful instructions as to the points to be borne in mind when making enquiries, a very useful record can be made. Mr. Newbery thinks it will only be less unreliable than information as to past prices, and Mr. Tute thinks it would be much better.

In this connection Mr. Newbery thinks that prices at markets and bazars should not be taken, but the prices paid to cultivators, which should alone enter into the question of rent. Mr. Tute agrees, and he wrote as follows in his preliminary report:—

"In the first place the crop on the ground is not sold at the market,. It is sold to the mahajan, and the rate varies with the power he may happen to have over the cultivator for the time being. The next stage is the visit of the pack-bullock man who buys up the village supply. He then sells it at the hât, whence the goladars bring it to their golas. We have thus four profits to be taken out of the crop after it leaves the ground, the first absolutely impossible to settle or define, and the others nearly equally so. In this and neighbouring districts the harvest time is the worst at which to fix rates. The people here employ foreign labour to reap and the labourers are paid in kind. This at the end of the harvest is thrown upon the market and causes a fluctuation in prices. This fluctuation is perfectly temporary, but would entirely disturb the accuracy of the price-list test."

The conference think the point raised by Messrs. Newbery and Tute should be considered, but they have no time to do so before the date on which this report must reach Government.

As regards the crops to be entered in the lists if this test is taken, the conference are unanimous in thinking it would be a great mistake to enter food crops only. The following crops should be also entered as regards six of the districts of this division:—

Bogra.	Rungpore.	Rajshahye.	Julpigoree.	Dinagepore.	Pubna.
Jute, sugarcane.	Jute, tobacco, sugarcane.	Jute, mulberry, sugarcane, ganja and in parts indigo.	Jute, tobacco.	Jute, sugarcane, ganja.	Jute and possibly sugarcane.

There are no mistakes in the statement attached to the Government circular except the obvious misprint in regard to *kalai* in Dinagepore, which should be 8 per cent.

Generally speaking rice and jute are interchangeble crops in this division, though not so everywhere.

Mr. Dalton thinks nothing should be done in the Bill to bring prices more under consideration in connection with enhancement.

39. Returning to section 45, and referring to paragraph 15 of the Government circular, Mr. Bolton thinks it essential that an increase in cost of production should be taken into consideration, and Mr. Oldham is in favour of it also. Messrs. Livesay, Newbery, Ruddock, and Tute would leave it to the courts to decide what is fair and equitable without inserting

any special provision in the Bill, telling them to consider the cost of production. Mr. Dalton does not like prices being considered in connection with enhancement, and is therefore against any such provision. My own view on the point is that the difficulties of making the calculation of the cost of production would be so great, and that the calculations would take so much time, that no such direction should be inserted in the Bill. Cases would last for weeks, evidence and calculations about the cost of bullocks and of feeding them, the cost of the plough, about the value of the ryot's labour, &c., &c., would, have to be made, and it seems to me it is only necessary to read Sir Barnes Peacock's judgment in the case of Ishwer Ghose to see what a difficult and laborious task would be imposed on the civil courts, and that the idea had better be abandoned. The reply to the question asked at the end of page 8 and beginning of page 9 of the Government circular is in the negative, if the cost is to be taken into consideration.

40. All except Mr. Bolton would omit section 46, as they proposed to omit all the provisions in regard to improvements.

41. All except Mr. Bolton* would omit the section 47. It is new, unnecessary, and might create difficulties.

* See his separate note.

42. *Section* 49.—Mr. Bolton approves of this section. Mr. Oldham would abolish it if the other limitations, such as percentages of enhancement, are retained, but if they are not retained, then he would retain this section. A majority of five would do exactly the converse of this, viz. retain the section if the percentage limitations are omited, but not otherwise. I would omit it, for though in some cases it would be beneficial, still it is hard on the zemindar to be kept out of the rent to which he is admittedly entitled, merely because the ryot has been heretofore paying rent at a rate that is so very much too low that the rise to a fair and equitable rent would be a considerable one.

43. *Section* 50.—Messrs. Oldham and Bolton are in favour of the section as it stands. The other five district officers are against it, if the arbitrary limitations and contract provisions stand. If they are omitted, the section may stand. I see no objection to a period being specified within which a second enhancement may not take place under ordinary circumstances, as it will, so to speak, give zemindars and ryots a rest; but I observe that there is no corresponding provision in the case of an abatement under section 51, and considering the rate of progress of the country, I think ten years, which, it will be remembered, is a period frequently selected (in the Western Dooars for instance) by Government for the duration of settlements of its own estates is sufficient, and I would certainly add a proviso that if any sudden rise in the value of produce, such as is caused by the construction and opening of a railway for instance, should occur, a second enhancement may take place within the ten years.

44. *Section* 51.—With one incidental exception, no such imperceptible cause for deterioration, as is referred to by Government, is known in addition to the efflorescence mentioned. The exception is that in a Wards' Estate in Dinagepore the construction of a road prevented a river from inundating land which had been formerly enriched by silt.

Paragraph 13 of the Government Circular.

The conference would omit all the words after the word "deteriorated" in clause (*a*) as an improvement, and if this amendment is not accepted, would omit the word "like" before the word "calamity" as being calculated to create room for much difference of opinion in the civil courts.

In clause (*b*) other crops, such as jute, tobacco, &c., &c., should be included, as mentioned in connection with priced lists. The reply to the question asked at the end of paragraph 3 of the Government circular is an unanimous negative. It might be most unfair to the zemindar to consider a fixed proportion of the crop as an equivalent antecedent of a money-rent invariable over a term of years. Mr. Bolton observes that it would practically have the effect of the 20 years' presumption in every *bhaoli* tenure in Behar, as the proportions of the crop taken by the zemindar and the ryot have been fixed for many years. Mr. Westmacott says—

"I do not see how a fixed proportion of the crop can be fairly considered as the equivalent antecedent of a money rent invariable over a term of years. A rent which has been a fixed proportion of the produce is above all liable to enhancement, and is the very opposite to rent at a fixed rate."

45. *Section* 52—Has been already dealt with, but, being against the consideration of prices in connection with enhancement, Mr. Dalton would omit the section, while the majority would retain it.

CHAPTER VI.

46. *Non-occupancy Ryots.*—Government think it a question whether this chapter does not tell too severely against the ryots. As will be seen by his separate note, Mr. Bolton concurs with Government and re-casts the chapter. For the reason stated in his separate note, Mr. Oldham would substitute "a fair and equitable rent" for "such rent as may be agreed on, &c." in section 56, and would retain the rest of the chapter, also allowing ejectment for recalcitrancy and denial of title. Mr. Livesay, in view of the chapter being directed against Behar, concurs in it, always saving the point of prevailing rates; but says that, if the Bill were for Bengal alone, he would agree with the majority.

*Paragraph 16 of the Government Circular.

Before stating their views, the other members of the conference request permission to say a few words with reference to a remark in paragraph 11 of the Government circular, which bears on the general question of the difference or the reverse between the rents that occupancy and non-occupancy ryots are respectively liable to pay at present. Government observe that under the Bill the rent of a non-occupancy ryot may be raised to a much higher figure than that of the occupancy ryot, and that, as far as the Lieutenant-Governor knows, this is a novel principle which it is now for the first time proposed to introduce into the Land Law of Bengal. It seems, however, to the majority that the principle was clearly laid down in Acts X of 1859 and VIII (B.C.) of 1869. Section 18 of Act VIII provides that the rent of the occupancy ryot can only be enhanced if certain conditions exist, and in the application of those conditions by the High Court, the rent is limited. On the other hand, section 6 of that Act provides that a non-occupancy ryot is only entitled to a pottah at such rates as may be agreed on between him and the zemindar, and the effect of this is that rent of the non-occupancy ryot may be raised to any amount which the zemindar demands and the ryot is willing to pay. This distinction the majority would preserve.

Mr. Westmacott says—

"I consider the omission of all restrictions on the rent which the landlord may demand from the ryot on his first entry to be very just, but I can see no just grounds for allowing the ryot compensation for disturbance. Nor do I see why a ryot should be allowed to obtain rights of occupancy in land which he takes for a terminal period. If there is land in which no ryot has obtained any occupancy right, I can see no reason why the landlord should not be permitted to let that land to the best advantage. To prevent his doing so is not to protect the rights of any person requiring protection, which is a legitimate function of the Legislature, but interferes unjustly with the rights of the landlord where a ryot or any person has rights which are in danger, and which it is necessary to protect against the encroachment of a stronger person, it is quite within the province of Government to interfere, but I think it unwarrantable to interfere with the rights of the landlord, and to create rights which are non-existent, and which are not demanded by any traditional feeling of the people. I am, moreover, of opinion that no such attempt to interfere with arrangements made between the landlords and ryots without rights of occupancy will succeed. If occupancy ryots are to be so protected as to hold at privileged rates of rent, the landlords will certainly prevent the accrual of rights of occupancy. I believe that in view of this, ryots have been far more harassed since Act X of 1859 became law, than they were before, and I think the proposed Bill by no means likely to facilitate the accrual of occupancy rights. If the law allows the landlord to obtain a fair rent for his land, he has no object in disturbing his rights. It is only where they are so protected that he cannot get a fair rent that he becomes hostile to their rights, and, as I have said before, if the rents are artificially restricted to something less than a solvent settled ryot can afford to pay, the rights of the ryot will gradually fall into the hands of non-cultivating middlemen."

As will be seen from what follows, the majority of five members of the conference (with whom it will be observed Mr. Livesay, practically concurs as far as Bengal Proper is concerned) are not only unable to concur with Government, but agree with Mr. Westmacott in thinking that Chapter VI goes much too far against the zemindars and in favour of the ryots. The majority consider that, if the zemindar is not allowed full proprietary rights over land let to non-occupancy ryots, or in other words, if he is not allowed to make his own terms with them, then he will be nothing better than the ghost of a proprietor, and that Chapter VI would be most unjust and unfair to the zemindars. Experience shows that as a body the zemindars of Bengal Proper have not interfered with the growth of occupancy rights in the case of unobjectionable persons, and hence the belief that 90 per cent. of the ryots have such rights. If in parts of Eastern Bengal the zemindars have tried to prevent the accrual of such rights, then the majority think it is because the zemindars there were driven in self-defence to do something by the persistent combination of ryots not to pay rent, meeting with no remedy on the part of Government, though the need for it was admitted by Government six years ago, and, as Mr. Tute observes, by the action of Government in bringing in these Bills so destructive of the long-established rights of the zemindars. If such provisions are dropped, and only those I have previously classed D enacted, the majority feel sure that only in exceptional cases, and with good reason, would the zemindars as a body prevent the accrual of occupancy rights in Bengal, though entitled to do so if they choose. The question of enacting a separate chapter for Behar on points calling for it, such as the accrual of occupancy rights there, has been dealt with already; but as regards other points in this chapter relating to non-occupancy ryots, the views of the majority apply to Behar as well as to Bengal, and for the reasons stated, Messrs. Newbery, Ruddock, Dalton, and Tute accept the following revised Chapter VI which I laid before the conference:—

Sections 55 and 56 to stand.

For section 57 substitute—

"The rent of a non-occupancy ryot may be enhanced to whatever amount may be agreed on between him and the landlord.

"When a landlord desires to enhance the rent of a non-occupancy ryot, at least six months' notice must be given to the ryot in writing, the notice to expire at the end of the agricultural year: and if the ryot elects to pay the enhanced rent, the enhancement shall take effect from the beginning of the next agricultural year.

"If the ryot remains in tenancy after the expiration of the year, he shall be held to have elected to pay the enhanced rent for another year and shall be liable for it.

"If the ryot is unwilling to pay the enhanced rent, he must give notice to the zemindar three months' before the expiration of the year, failing which he shall be liable for three months' rent for the following year, even if he vacates the land before that year begins."

Section 58. Omit (*d*) and substitute "on the ground that he has refused to pay the enhanced rent demanded by the landlord, and has not vacated the land at the expiration of the year during which he received notice."

Section 59 to stand.

Omit sections 60 and 61.

Some officers are of opinion that the conversion of a non-occupancy ryot is by no means an unmixed good, and that though the advantages preponderate, the disadvantages should not be wholly lost sight of when it is a question of injuring the zemindar materially in order to assist in the accrual of such rights. Mr. Tute observes that the right ties the ryot to the soil when he might emigrate from an over-populated district with public advantage, and that in Dinagepore a ryot would rather not acquire the right and be liable for the rent of a specified holding instead of only paying rent for the land he actually cultivates.

CHAPTER VII.

Paragraph 17 of Government Circular.

47. The conference unanimously recommend the omission of this chapter, as they are opposed to the recognition of under-ryots in any way.

CHAPTER VIII.

Paragraph 18 of the Government Circular.

48. The question of the 20 years' presumption in section 64 has been dealt with, and clause (3) of it would be thrown out under the reply given to the question asked at the end of paragraph 13 of the Government circular.

Section 69.—As in case of dispute the ryot can deposit rent in court, Mr. Westmacott thinks it unfair to the landlord that the ryot should be allowed to choose what part of his rent debt he will pay first. A majority of six think a proviso should be added to the section, saying that the landlord's claim to rent for a prior period shall be affected by the ryot's action, and that no presumption of payment for a prior year shall arise. If this is added, they think the section may stand. Though Messrs. Oldham and Bolton see no objection to the addition of the proviso. They think it unnecessary.

Section 70.—In reply to the question asked at the end of paragraph 18 of the Government circular, the conference think the forms of receipt and account in the schedules good as far as they go, but that Government must be empowered to prescribe forms for each district. For instance, *bhaoli* will not apply to Bengal, and in some parts of the country the amount of land of first, second, and third qualities, and the rent paid for each, are always entered, and in other parts other particulars are entered

It is here suggested that forms of receipts, accounts, &c., be provided by Government for sale at cost price, and that, if necessary, this be provided in the Bill.

Section 71 (3).—All agree with Mr. Dalton in recommending that this clause be altered to the effect that the landlord shall retain a counterfoil of the statement.

Section 73 (*a*)—All agree that the words "or his agent" should be inserted after the word landlord, and concur in Mr. Tute's proposal that clause (*b*) should be omitted as vague, difficult to prove, and liable to abuse. As a consequence, the proviso "In clause (*b*)" to 74 (3) would also be omitted. Mr. Westmacott is disposed to allow a ryot to deposit rent for any reason on payment of a fee in every case, as sometimes the amlah require a *douceur* for themselves, but the conference think it would put the zemindar to great inconvenience in case of a combination of ryots, for instance, to have to send to court for all his rent.

Section 77 (2).—If the view of the conference that an occupancy holding shall only be saleable for its own arrears is approved, this clause will only apply to that case.

Section 78 (3).—Messrs. Newbery, Ruddock, and I agree with Mr Tute that this clause should be omitted. Mr. Bolton would retain it; Mr. Livesay agrees with Mr. Dalton that the extension provided for in the clause should be limited to 15 additional days, and Mr. Oldham gives no opinion.

Section 80.—All except Mr. Bolton, who dissents in his separate note, concur with me in recommending that in such cases the awarding of 25 per cent. damages should be made compulsory. As Mr. Oldham observes, it is a defect in the Bill that the withholding of rent that is due and claimed at the rates regularly paid or decreed for years past is insufficiently penalised.

Section 81 (3) —In view of section 83, Messrs. Livesay, Newbery, Dalton, and Tute concur with me in recommending the substitution of the word "shall" (or must ?) for "may" in this clause. Messrs. Ruddock, Oldham, and Bolton * prefer "may;" Mr. Oldham, however, attaching little importance to the point.

* See his separate note.

Mr. Dalton thinks the civil court, and not the officer, should do the work of sections 81 to 83.

Sections 85 *and* 86.—Considering that illegal cesses are often paid by express wish of the ryots in lieu of an enhancement of rent, Mr. Tute proposes that, where cesses exist, the zemindar shall have a right to hand over his estate to the Collector to fix the rents at the zemindar's expense and then return the estate to him. All but Mr. Bolton concur in this, as the measure would be generally beneficial, and extra officers could be appointed at the cost of the zemindar. Mr. Bolton thinks Chapter X sufficiently provides for such a case.

CHAPTER IX.

49. The matter of improvements has been dealt with.

Section 96(3). *Abandonment.*—The conference are unanimous in recommending that the period of two years be altered to one year, and that the ryot be required to prove that he did *not* voluntarily abandon the holding, &c., &c, [as in 96(1)] to entitle him to re-enter. In the case of abandonment that is not voluntary, but owing to circumstances over which the ryot has no control, such as being put into jail, Messrs. Oldham and Bolton would give the ryot the benefit of clause (3), and Mr. Oldham would extend it a little further, saying, for instance, that the court may do it in case of hardship.

The majority would not give the ryot the benefit of the clause in such a case. All are agreed that the ryot must pay the rent for the year of abandonment, and that this should be secured.

50. *Section* 99. *Measurements.*—All are agreed that the zemindar ought to be allowed to measure the external boundaries of each plot of lakhiraj land only, and not any interior details unnecessary to enable him to ascertain the total areas held.

Paragraph 21 of the Government Circular.

Section 101.—All except Mr. Ruddock, who would allow local standard if the ryot wishes it, are in favour of the Government standard of measurement. Mr. Oldham says that a series of our standards were adopted over a large tract of country in the Sonthal Pergunnahs in a very short time without difficulty

Section 102.—Messrs. Dalton and Bolton are in favour of the power to appoint a joint Manager. The majority think section 73 sufficient to meet the circumstances under which a joint Manager would be beneficial, and zemindars are much opposed to such an appointment.

If a joint Manager is established, then all agree that, as Mr. Bolton suggests, the Manager's authority to reduce rents should be restricted, and that a penalty should be provided for obstructive interference with the Manager on the part of any of the co-sharers.

Mr. Bolton suggests that the civil court might be empowered, either under the Bill or some other law, to direct a butwarah in an estate to which a Joint Manager has been appointed. The majority think this unnecessary.

CHAPTER X.

51. *A. Record of rights.*—Great as are the advantages of such a record if made when an estate is from time to time under settlement, I think that, without the powers exercised by a settlement officer on such occasions to make what they settle hold good for the period of settlement, much less can be done and settled. In a permanently settled estate classes of tenants with fixed rents for the period of settlement cannot be established. A record made in 1885 that A is an occupancy holder of holding, B may be quite useless in 1888, owing to A leaving it, and to its being split into three holdings given to three non-occupancy ryots, or split into four bits, two of which are given to non-occupancy ryots and two to adjacent occupancy holdings, thus also affecting the record of their holdings made in 1885. Such changes can be prevented to a very great extent in the case of temporary settlements, and where any are allowed or take place, a knowledge of them can be secured in a great majority of cases, and a record made at the time, while any that have not come to light are detected at the expiration of the temporary settlement. I do not think it would be possible by any legal provision to obtain correct information of the numerous changes in permanently-settled estates, and if it were possible, the business of recording changes would be so vast that it does not seem advisable to undertake it. Again, probably most officers will agree that no higher value should be attached to undisputed entries than that provided in section 116, and this class of cases would, owing to the absence of ryots, form a large majority of those recorded. I think therefore that it is not worth while undertaking an operation of such magnitude in order to secure such limited advantages as could be expected from it, while much forgery and perjury would be inevitable. For these reasons, I would confine the operation to three classes of cases—*first*, those in which both the zemindar and the ryots apply for it, and are willing to pay for the limited advantages it will secure; *second*. those in which interference on the part of Government is advisable on public grounds to prevent ryots, &c.; and *third*, cases in which auction purchasers are unable to obtain zemindari papers and apply on that ground.

Paragraph 23 of the Government Circular.

The majority concur with me in this, and at Mr. Bolton's suggestion would add the cases in clauses (*a*) and (*c*) subject of course to parties paying the cost. As regards (*c*), we do it in Wards' estates already without any legal provision, but I would not do it in other estates on application unless *both* the zemindar and the ryots wish it. Mr. Oldham, though he acknowledges the difficulties, and would not attempt to keep up the record by entering mutations

in consideration of the vastness of the work, still thinks the operation would be of use in permanently settled estates generally for a certain period, it having proved so for nine years in the Sonthal Pergunnahs.

Section 116 (2).—The conference are unanimous that no higher value should be attached, and that the section should stand.

Section 120.—As in the case of enhancement of rent in the ordinary manner, I would alter the period from 15 to 10 years, and would allow an enhancement within 10 years in case of a sudden rise in the value of land, owing, for instance, to the opening of a railway.

Section 122.—The views of the conference in regard to the 20 years' presumption have been expressed.

CHAPTER XI.

52. *Table of Rates*.—Messrs* Oldham and Bolton are in favour of this chapter. The majority and Mr. Westmacott think that the reports of the special officers deputed to different parts of Bengal and Behar to try if tables could be framed show conclusively, and it is in accordance with the personal experience of the majority that, excepting in a few special localities under very different circumstances from the greater part of the country, no table of rates could be framed that would be of real use, and that ought to be used The rates for the same qualities of land held by the same class of ryots vary in contiguous estates, owing to one zemindar being rich and lenient, and the others being poor and exacting, or pressed by family marriages and lawsuits. The case mentioned by Mr. Oldham is an exceptional one, but even there he says that the classes of lands went up to 45 in number in some areas. The majority are, as already stated, strongly opposed to such provisos as the one at the end of section 125.

Paragraph 24 of the Government Circular.

* See their separate notes.

CHAPTER XII.

53. About khamar, &c., lands has been dealt with in connection with section 30.

CHAPTER XIII

54. *Distraint*.—Referring to the first portion of this paragraph, the Government of India (paragraph 24) are, I see, in favour of "still further improving or cheapening the procedure" adopted by the Select Committee. The conference are, with one partial exception, unanimous in thinking the procedure in the Bill quite insufficient, and that, if distraint is so clogged, it will be useless to the zemindar, though in the interests of the ryot it is a better method of realising rent than by suit if precautions are taken to prevent the process being abused. The conference, accepting a suggestion of Mr. Dalton's, recommend that the zemindar be allowed to make the first distraint seizure as at present; but on that being done, he be compelled (under a penalty) to at once obtain the sanction of the civil court to what he has done by reporting the arrear of rent, on which the ryot would be called on to admit or contest the claim. Nothing less than this will, in the opinion of the majority, make distraint of any use, while there will be a safeguard against any abuse of it. Mr. Westmacott had no opportunity of considering Mr. Dalton's suggestion, but agrees that the procedure in the Bill would be quite useless, and he specially cites the case of crops on the Noakhally churs, which can be easily removed by boats. The exception is that Mr Bolton would retain the present law in the case of churs, but prefers the procedure in the Bill for other lands.

Paragraph 25 of the Government Circular.

Section 139.—If our views about sub-letting are approved, the words or "under-ryot" in the beginning and clause (3) will be cut out.

Section 141 (3).—The majority agree with me that, if our general recommendation in regard to distraint is not approved, the word "shall" ought to be substituted for "may" in this clause, and similarly that the court be bound to cut and store ripe crops at the cost of the eventual loser. Mr. Oldham has no objection to this. Mr. Bolton prefers the word "may."

CHAPTER XIV.

55. *Procedure*.—The conference are unanimous in thinking the absence of any provision to facilitate and expedite the realisation of rent and cesses admittedly due is a grave defect in the Bill, and all but Mr. Bolton concur with me in recommending the application of the summary sale procedure in force, and now prescribed for putni tenures to occupancy holdings also. Mr. Bolton* does not concur in recommending the application for the summary procedure If he thought registration possible, he would apply that procedure. Here the question of registration, paragraph 28 of the Government circular, may conveniently be brought in. All would be in favour of it if they thought it practicable; but Messrs. Ruddock, Oldham, and Bolton think it impracticable on account of the vastness of the work, and the great cost and the large establishments that would be involved. For this reason Messrs. Oldham and Bolton would go no further

Paragraph 26 of the Government Circular.

* See separate note.

in the matter than is provided for in the chapter on the record of rights. Mr. Livesay thinks it would be difficult, but not impossible, and would make it compulsory. Mr. Dalton would leave it optional, but would tempt ryots to register by offering some inducement. Mr. Tute would go with Mr. Dalton or do anything else to effect or promote it. I would make it compulsory, and think that occupancy rights having been established in the case of so many ryots would be admitted in a great majority of cases, and that the addition of some sub-registrars in the thanas would enable registration to be effected, the cost being paid by the ryot who would benefit generally by the registration.

Section 168.—Mr. Oldham would make the power of revision in the proviso at the end unlimited, going on a case where an officer in the Sonthal Pergunnahs allowed holdings to be divided, which, though not a "decree," is an "order." Messrs. Livesay, Ruddock, and Tute concur; Messrs. Newbery and Bolton* do not. Mr. Dalton thinks that, if one decree governs other analogous cases, the values should count accumulatively, and an appeal should be allowed when the values in the section are thus exceeded. I concur with Mr. Dalton as regards this point, and on the one raised by Mr. Oldham. I think there is much in what Mr. Bolton says in his note of dissent, but that, while it is most desirable to retain the limits in the section, and to allow neither appeal nor revision in the case of simple decrees for arrears not exceeding such amounts [indeed I would increase them in cases decided under clause (*a*)], I think some power to revise such orders as that mentioned by Mr. Oldham should be provided. Probably the addition of some such words as "or has acted without proper authority" to the proviso would suffice.

* See separate note.

Section 171.—Mr. Oldham proposes to omit this section as difficult to work, and thinks it better to let a ryot sue for damages or compensation in such a case. A majority agree, and think it might work unfairly when a ryot, on hearing he is to be ejected runs a plough over the land here and there or scatters some seed on it. Mr. Bolton* would retain the section. If the section is retained, the conference are unanimous in supporting my recommendation that before the words "his ejectment" in the beginning of clauses (*a*) and (*b*), the words "filing an application for" be inserted so as to meet the case just suggested.

* See separate note.

CHAPTER XV.

56. *Sales for arrears under decree.*—Excepting Mr. Bolton,* the members concur in the following general view of this chapter, which I placed before them.

* Paragraph 26 of the Government Circular.

* See his separate note.

There is no objection to the general sale procedure prescribed. No tenure should be saddled with incumbrances (in excess of the protected interests decided on) without the consent of the zemindar. This stipulation is considered necessary, as otherwise the incumbrances might be such as to diminish the value of the holding to an extent that would prevent its selling for as much as the arrears, and a provision for it should be inserted in the Bill. As regards incumbrances created before 2nd March 1883 none should stand, unless in accordance with custom.

The majority would omit clauses (*c*) and (*e*), the first as relating to matters beyond the scope of what the Bill should cover, and also as wanting in precision, and the latter as diminishing the sale value of the tenure or holding, and going much further than is necessary. The majority would also omit section 185, as, if Government took such action, it would diminish the value of the holding, and the arrears might not be recovered at the sale. It will be observed from his separate note that Mr. Bolton would accept the chapter, omitting clause (*c*) of section 176, and adding a proviso that the zemindar be empowered to object absolutely to the creation of a registered and notified incumbrance, as well as the following amendment suggested by Mr. Dalton out of section 186 (*c*) about which the conference are unanimous. It should be provided that the minimum sum that must be bid, before a sale with the incumbrances holds good, shall include the rent that has fallen due between the institution of the suit and the date of sale. If the bid is insufficient to cover that rent, a sale without incumbrances should take place, and the decree-holder should recover all rent due up to the second sale before any surplus is paid to the ryot defaulter. These provisos are necessary, as there is sometimes considerable delay in the hearing of a suit.

57. Before dealing with Chapter XVII as a whole, I reply to paragraph 12 of the Government circular about *bastu* or homestead lands. No such custom as that referred to near the bottom of page 7 of the circular, whereby a ryot who is ejected from his cultivation retains his bastu, is known to the Conference to prevail anywhere except in the Sonthal Pergunnahs, nor except in that district, is any case known of specially screwing up the rate for bastu. On the question whether bastu should be exempted from enhancement the Conference are unanimous in thinking that, where it is part of the agricultural holding, it should not be exempted; and that where it is not part of it, section 216 is sufficient.

CHAPTER XVII.

58. *Section* 210.—Messrs. Oldham* and Bolton are in favour of this section, and Mr. Oldham is so on his experience gained in the Sonthal Pergunnahs. The majority would cut out the section altogether and allow complete freedom of contract. The Dacca zemindars justly observe:—"The provisions are neither based upon any good policy, nor can they be supported upon any sound principle.

Paragraph 29 of the Government circular.

* See his separate note.

The ryot has full liberty to mortgage, sell, and sub-let his holding on any terms he may choose. He can make any terms in case he is granted a permanent mokurraree lease. Yet he cannot be deemed capable of making any contract that may trench upon some particular provisions of the Bill. This surely is unwarrantable and indefensible."

When he was a Member of Council Lord Macaulay wrote as follows when a proposal of this sort was made :—

"The general rule is this : That grown men, not idiots or insane, should be suffered to make such contracts as are not injurious to others, and as appear to them to be beneficial to themselves. To say that the ryots of this country are mere children and ought to be specially protected is, I conceive, quite incorrect. They are not intellectually inferior to the peasantry of other countries. They are as well acquainted as we are with the difference between an anna and a rupee, or between a month and a year. They are suffered to make the most important contracts, and nobody proposes to deprive them of this power, except when indigo is in question. They marry and govern their families. They are treated by our Courts of Justice as persons quite capable of comprehending the nature and consequences of their acts. If they are not so, if they are not able to judge for themselves in matters which concern only themselves better than the Government can judge for them, they will require protection, not in this particular case alone, but in ten thousand other cases. I conclude, therefore, that there is nothing in the intellectual state of the ryots which renders proper that contracts freely made by him should be set aside. But it is said these contracts are not freely made. Force and deception are employed. The peasant assents to disadvantageous terms from fear of bludgeon-men, or he is tricked into signing some paper which he does not understand. I answer, that in all such cases there ought to be a remedy. The law, I apprehend, would even now reach those oppressive and fraudulent practices."

This is the opinion held by one of the ablest men who ever had an opportunity of judging of the competency of the ryots of these Provinces to manage their own business, and since the opinion was recorded the ryots have progressed remarkably in general intelligence, as was only to be expected with the introduction of railways and the spread of education. The majority consider the ryots quite fit to make such contracts as they please, and that it is most unfair to the zemindars to enact this section.

Section 211.—Mr. Oldham thinks this section had better be omitted. Zemindars grant such leases at times, and custom would allow of it here and there, but it is better not to create the right. Mr. Bolton thinks the section superfluous. The other members concur with Mr. Oldham ; and, as Mr. Dalton says, it is a question whether it would not give a tenure-holder or sub-tenure-holder a right to grant such a lease.

59. *Section* 217.—Mr. Oldham thinks greater prominence should be given to this most important section, which he would separate from the others on custom and make the second section of the Bill. Messrs. Livesay. Newbery, Dalton, and Tute concur. Messrs. Ruddock and Bolton would leave the section where it is, though they do not think the point of much importance. I agree that greater prominence should be given, but the appropriate position or number of the section in that view will, I think, be 4.

Referring to the point of transferability, Mr. Bolton would add an illustration to this section to the effect that wherever an occupancy holding is transferable by custom it will remain transferable. The others think this unnecessary.

60. *Section* 220 (*c*).—The Conference concur with me in calling attention to the ambiguity of this clause. It is a question whether, if a friend of a ryot, with his consent, prevents the reaping of crops under distraint proceedings, that friend will not be held to have done a perfectly legal act under this clause.

Section 222.—I think it hard that one rich shareholder should prevent another who is poor from enhancing when it would admittedly be just to enhance. This is admitted by the majority, but they think it an inherent defect in the joint system, and that the reverse would be harder on the ryot, as he might have to defend several suits On this point I think he would defend that of one shareholder only, and if given against him need not defend the others at all ; while if given in his favour, the other shareholders would not institute suits at all.

Paragraph 80 of the Government Circular.

Section 227.—The section seems sufficient, and no member has any remarks to make about it.

Paragraphs 81 to 84 of the Government Circular.

61. *Point* (2) *in paragraph* 2 *of the letter of the Government of India.*—A few such talooks are found in Rajshahye and Pubna, and again in the Sonthal Pergunnahs, Monghyr, and Bhagulpore. There are none in Bogra, Rungpore, or Julpigoree. No complaints of difficulty in realizing have been made, and Mr. Oldham's experience is that there is none. Such talooks being very valuable, the rent is paid regularly and punctually, and so the summary sale process does not seem necessary. The officers, who know of no such talooks, however, give no opinion on the point. No action seems necessary in the matter.

Point 3.—The opinion is unanimous that lakhraj tenures should be subjected to the summary sale procedure for the recovery of legal cesses.

Point 4.—Has been dealt with.

Point 5, *hal hasilee.*—Tenures do not exist in this division, and the information about them possessed by one member is insufficient to enable the Conference to give any opinion about them. A kind of *utbundee* tenure exists here and there in Rajshahye In Pubna there are said to be tenures termed "ootit-pootit," much the same as utbundees. The Conference unanimously think

that in utbundee tenures the ordinary law will cover the "*junma*" of the ryot, and as regards the *utbundee* land that custom is sufficient.

Point 6.—Little is known of any such tenures, except the Rungpore jotes. As regards others, no reason is known for exempting them from the zemindar's right of presumption, except that, wherever they are now freely transferable, Mr. Bolton would not give the zemindar the right. This would apply to the Rungpore jotes, in regard to which Mr. Dalton would not give the right to the zemindar; while Mr. Newbery thinks it should be given, and the remaining member of the Conference agree with him.

Paragraph 34 of the Government Circular.

62. The foregoing paragraphs will show that the holding of the Conference, and the consideration of the debates in Council and the published literature on the Bill, has effected some changes and modifications of opinion on the part of the officers of this division, the general result being, on the whole, decidedly more in favour of the zemindars than of the ryots. The discussions have certainly done good, as many points and views which had not occurred to some members, and which altered the complexion of questions, were brought forward by others.

63. In conclusion, I regret that this report will reach Government a few days after the date fixed. Two days' delay arise from my having counted on being able to send in the report here, while orders to send it to Calcutta reached me when the Conference was sitting. In regard to three days more, I have to plead that the sittings of the Conference took a much longer time than I had expected, the last one having closed on the 14th instant, and the notes of dissent of Messrs. Oldham and Bolton having been delivered in the morning and at mid-day on the 15th.

NOTE.

My views differ on so many points from those of the majority of the Conference that I am constrained to record a separate note. I shall take the opportunity of explaining at the same time more fully than could be done in the report the reasons which have led me to propose the amendment in regard to the 20 years' presumption, which has been accepted by my colleagues.

CHAPTER II.

Section 5, *sub-section* (5).—I approve of the proposed presumption because it appears to be justified by the existing practice throughout Bengal. In Pubna ryots holding more than 100 bigahs almost invariably sub-let.

CHAPTER III.

I entirely agree in the provisions of this chapter. The principles of enhancement laid down in the first part are fair to both landlords and tenure-holders. The double limit (section 8), the power to order gradual enhancement within a period of five years (section 9), and the 10 years' term (section 10) are essential for the protection of tenure-holders and their ryots. The abandonment of these provisions would expose tenure-holders to excessive enhancement, and compel them in self-defence to seek for compensation by recourse to like proceedings against their tenants. The majority of the Conference have recommended the omission of the provision in section 7 (3), securing to the tenure-holder in every case a minimum profit of 10 per centum of the net collections, and would leave to the Court absolute discretion as to the share of the profits to be awarded to him. To this I am unable to agree. The profit of 10 per centum is the lowest which should in fairness be left to the tenure-holder under any circumstances, and an ample margin for satisfaction of the landlords' just claim remains in the balance of 90 per centum which the Court is, under the Bill, permitted to allot at its discretion.

CHAPTER IV.

The question of the 20 years' presumption arises and may be considered in connection with this chapter. The proposal to retain this presumption appears to me fairly open to an imputation of insincerity. The presumption was introduced in 1859 for the benefit of a special class of tenants, and full opportunity for asserting and obtaining the confirmation of their title to hold at fixed rates has been enjoyed by those tenants during the 25 years which have since elapsed. Its re-enactment is, therefore, scarcely needed on behalf of this class, and the landlords might urge, with much reason, that the determination to maintain it in the law indicates a desire, not so much to protect the interests of ryots who possess rights to hold at fixed rates as yet unconfirmed by a decree of Court, as to assist indirectly the general mass of tenants to acquire such rights where the zemindar, in consequence of irregular management, or of his succeeding to the possession of an estate without the requisite papers, may find himself unable to rebut the plea of fixity of rates. It is obvious that the further we advance from the date of the Permanent Settlement, the smaller becomes the justification for this provision, and the larger the number of cases in which attempts are likely to be made by the tenants to abuse it. The trouble caused to the zemindars by the existence of the presumption thus tends to increase as the need for its retention on behalf of tenants justly entitled to hold at fixed rates decreases. In Pubna I find that the presumption is very frequently pleaded; and, although the zemindar is seldom called upon to produce evidence to rebut it, the ryot failing in the great majority of cases to prove payment at an uniform rate for 20 years, he is put to considerable trouble in meeting the ryot's attempt to establish the plea. The same thing is, I understand, common in other districts, and the zemindars have, under the circumstances, very good cause for asking that the law should not continue to impose upon them the necessity of meeting this plea. The presumption, moreover, frequently operates unfairly against them in cases in which it is fraudulently pleaded, as it helps the tenant very materially to establish his claim to hold at fixed rates. I agree, then, with those who hold its retention unjust to the landlords and recommend its abolition. With the view, however, of providing against possible hardship, I would not suddenly withdraw it, but enact that it shall cease to be pleaded after two years from the passing of the Bill, except in cases which suits may have been instituted within that period to obtain a decree confirming a right to hold at fixed rates. Tenants claiming to hold at such rates would, under this provision, be driven into the Courts, unless they make an amicable arrangement with their landlord; but seeing that most of the genuine claims to fixity of rates have probably been judicially disposed of already, and that the costs of litigating would act as a powerful check against the institution of false suits, I venture to think that the number of cases will not be excessively large. The disposal of the cases would also be simplified by the fact that frequently a single decision would rule all the claims in an entire estate. Were the proposal, however, sure to give rise to considerable litigation during the first two or three years after the passing of the Bill, it wou'd still be well to face this result, and clear away from the Statute Book, once for all, a provision for which sufficient justification no longer exists. The proceedings of the Assistant Commissioners under the Irish Land Act may be cited as, in some degree, a precedent for this proposal to call into existence and dispose of a mass of litigation at the very outset of the introduction of the new law. The obligation to appeal to

the Courts thus imposed on the tenants might prove a hardship to some individuals, but it must be remembered that, whether the presumption is permanently retained, or abolished after the fixed period proposed, the burden of proving his right to fixity of rates must always rest on the tenant whenever he seeks to establish that right.

It is proposed in section 64 (2) to abolish the presumption in local areas in which registration of tenancies held at fixed rates may hereafter be undertaken, but the practicability of such registration on an extensive scale is open to doubt, while its restriction to limited areas would be of small benefit to the landlords as a body. Registration, moreover, would encourage the advancement of false claims, and thus create an amount of litigation, exceeding, in all probability, that which is likely to arise under the proposal which I have ventured to make. I submit, therefore, that the preferable course is to require the ryots to substantiate their claims by suit within a definite period, and then to abolish the presumption entirely.

CHAPTER V.

Sections 25 *and* 26.—The majority of the Conference, accepting the landlord's view, would omit the words "or estate" from these sections, limiting the acquisition of the right of occupancy and of the status of a settled ryot to the village itself. I perceive no material objection to the use of these words; but as the landlords appear to attach importance to the point, I would concede it, providing, however, a somewhat larger area than the village itself for the accrual of occupancy rights under these sections. For the words "or estate" I would substitute "or within a distance of two miles from that village," restoring the language of a former draft Bill. The extended area would embrace, in the majority of cases, the whole of the lands cultivated by individual ryots. It may be objected to this proposal that it would confer at once on the occupancy tenant of one landlord a right of occupancy in new land taken by him from another landlord within the two miles' limit, but to this objection it may be replied that the same result must sometimes ensue if the village alone is adopted as the area for the purposes of these sections. I would reck on the distance of two miles from the outer boundary of the village.

Section 30.—The words rejected by the majority of the Conference should, I think, stand. I can conceive no justification for the proposal that the right of occupancy should be absolutely barred in *khamar*. The landlord could under the section prevent its accrual, and he should similarly be allowed to permit its growth, should he deem it to his advantage to do so.

Section 31.—I see no objection to the words which my colleagues would excise from clause (*a*). They are needed in the interests of the landlord. Clause (*b*) I would retain, my views on the subject of improvements being opposed to those of my colleagues. With regard to clause (*f*), I am fully with the rest of the Conference in deprecating the formal recognition of transfer by private sale as an incident of the occupancy right. The arguments for and against the acknowledgment of transferability have been repeatedly stated, and nowhere more ably and clearly than in Mr. Field's note appended to his Digest of the Rent Law; but the question still remains surrounded with doubt and difficulty, and it is impossible, even for the strongest advocate of transferability, to predict with confidence that the effects of its recognition will be altogether beneficial to the peasantry. Prudence seems, therefore, to dictate that we should not specifically recognize the right of transfer under the Bill. It is, no doubt, impossible to ignore the right where it actually exists by custom, but I would leave its operation in such cases entirely to the force of custom. Its recognition by the Bill would in all probability be attended by a rapid growth in the number of middlemen.

While agreeing with my colleagues, however, as to the advisability of rejecting the right of transfer by private sale, I am of opinion that transfers by gift to blood relations (among whom co-sharers would ordinarily be included) should be legalised. This would tend to encourage improvements by tenants, and is besides a concession to which they are justly entitled. For the same reasons, I would accord to occupancy tenants the right of bequest to blood relations.

I agree with my colleagues, for reasons similar to those which apply to transferability, in recommending that clause (*g*) should be omitted, and the right of sub-letting left, where it exists, to be regulated by custom; but I am not prepared to accept their suggestion that checks on the exercise of the right should be provided in the Bill (*see* sections 37 and 38 below).

My reasons for declining to join the rest of the Conference in proposing that fraudulent denial of the landlord's title should be made a ground of ejectment are, briefly, these:—*First*, section 80 provides for the award of damages in such cases. *Secondly*, tenants who fraudulently deny their landlord's title almost always do so at the instigation of another landlord, and the effect of my colleagues' proposal would, therefore, be to enable the landlords, as a body, to profit by the malpractices of members of their own class. *Thirdly*, two landlords wishing to clear their estates of occupancy ryots might succeed in their object by collusively instigating each other's tenants to deny their respective titles, and then insisting on the ejectment of the tenants.

Section 35.—In view of my opinion that transfers by gift to blood relations should be permitted, I would retain this section.

Sections 37 *and* 38.—The grounds on which we have suggested that these sections should be excised from the Bill have been stated in the report. I object to the provisions which the Conference proposes to substitute for them, for the following reasons:—

(1) The right of sub-letting having been rejected, it seems to me unnecessary and inconsistent to impose checks upon it. I would make no allusion to it in the Bill.

(2) The proposed checks could in practice be evaded—the first by ousting the sub-tenant before the expiration of the period of 12 years, and the second by the exaction of a contribution from him over and above the rent.

(3.) They are intended to act against the lessor, whereas a larger measure of success is, in my opinion, likely to be attained by attacking the lessee. I would refuse to take any cognizance whatever of sub-tenancies, and thereby render them of so little value that a landless ryot desiring to take land would be under the strongest incentive to seek a holding as an independent tenant, instead of resting content with the position of an under-ryot. I anticipate that by this means a stimulus would also be given to those migrations from the more to the less densely populated portions of the country which are so beneficial to all parties.

Section 41.—These limitations on the enhancement of occupancy rents by private contract are indispensable. Without them such enhancement should be altogether barred.

Section 42.—The exception at the end of this section should be omitted. It affords a means of unduly enhancing occupancy rents, which should not be left in the hands of the landlords. The latter's claims to a fair enhancement would be sufficiently secured by substituting for "except in pursuance, &c.," the words "until such rent has been enhanced by a decree under this chapter." The second sub-section should, in that case, be thrown out.

Section 43.—I would strongly advocate the abolition of the prevailing rate as a ground of enhancement. This provision has been unquestionably much abused by the landlords under the existing law for the purpose of forcing up rents, and its retention would tend materially to curtail the benefits which the Bill is calculated to confer on the cultivators of the soil. The landlords have under the present law commonly succeeded in altering the prevailing rate to their own advantage by resorting to the device of either coercing the more ignorant and unresisting tenants into the acceptance of enhancements, or of inducing the less scrupulous tenants to agree collusively to enhancements; and this device they would doubtless continue to employ with a considerable measure of success after the passing of the Bill if the prevailing rate survives This ground of enhancement is also open to very serious objection on account of its inherent and inevitable tendency to push up rents throughout the country to the maximum limits prevailing in the worst managed and most heavily-rented estates.

Section 45.—In awarding enhancements under this section it is essential that the Courts should take into account any increase which has taken place in the cost of production. A rise in the value of produce being usually accompanied by an increase in the cost of production, justice to the tenant obviously demands that some allowance should be made to him in consideration of the higher expenditure involved in the production of his crop, when an enhancement on the ground of a rise in prices is granted to the landlord.

Section 47.—These restrictions should be preserved if the ground of enhancement to which they refer is maintained.

CHAPTER VI.

This chapter requires considerable modification, but of a nature entirely opposite to that which has commended itself to the majority of the Conference. The statutory lease provided for in sub-section (7) of section 60 would be fatal to the acquisition of occupancy rights by non-occupancy tenants, and is thus altogether inconsistent with one of the leading objects of the Bill. It is of vital importance to the cultivating classes that every provision which militates against the growth of occupancy rights by the mere operation of the statutory prescription of 12 years, and facilitates the rise of rents by the establishment of competition rates, should be eradicated from the Bill. The more reasonable of the zemindars themselves, I understand, have never expressed a desire to prevent the accrual of occupancy rights to tenants who manifest a disposition to live in harmony with them, or to demand from their tenants more than a fair rent and a fair enhancement after proper intervals. I assume, then, that landlords of this class, whose views alone merit consideration, would be satisfied with any provisions which would be based on this conception of their disposition towards their tenants, and I would therefore suggest that this chapter be re-cast in the following manner.

Section 55, being merely declaratory, should stand.

In *section* 56 for the words "such rent as, &c.," should be substituted "a fair and equitable rent." I would not, however, insist on the alteration if it be necessary to concede the section as it stands to the landlords, provided that the prevailing rate ceases to be a ground of enhancement.

I would reject *section* 57.

I would preserve the first two clauses of *section* 58. Clause (*c*) I would replace by the following :—"Where he has been admitted to occupation of the land under a lease for a term of years, on the ground that the term of the lease has expired, provided—(1) that it is proved to the satisfaction of the Court that he has, in collusion with other tenants or with another landlord, sought to injure the landlord's interest in his own holding, or in the village or estate generally ; or (2) that the landlord requires the holding for cultivation by himself, or for the making by himself of an improvement as defined in this Act." The landlord would under this modification retain the power of ousting an obnoxious tenant, and of recovering possession of the land for the only purposes for which he is likely to require it.

I would retain *section* 60, subject to the insertion of the following in the place of sub-section (7) :—"If the ryot agrees to pay the rent so determined, he shall be entitled to remain

in occupation of his holding at that rent until a fresh enhancement is granted by the Court under this section, or becomes admissible under the provisions of Chapter V of this Act." The accrual of occupancy rights would be effectually secured by a provision of this nature. I would not allow a fresh enhancement by mutual agreement while the tenant continues to be a non-occupancy ryot, because some landlords might take advantage of this to enhance non-occupancy rents unduly.

Section 61 should be retained.

The chapter thus modified would, I submit, concede to the landlords all that they may reasonably demand, while insuring the non-occupancy tenants against exorbitant rents and attempts to prevent their acquisition in due course of the status of occupancy ryots. Experience clearly teaches us that attempts of this kind will be made, and it is of the utmost importance that some provisions like the above, which would render arbitrary ejectment an impossibility, should be introduced into the Bill. In Pubna several of the zemindars have been taking short-term kabuliyats from their tenants without discrimination between occupancy and non-occupancy ryots, the holdings being usually designated in those documents "*mirjadi*" (held for a term) or "sarasari" (tenancies at will). These terms are generally inserted as a description of the tenant's holding in kabuliyats taken everywhere in the district, the object being manifestly to deny the existence of occupancy rights.

CHAPTER VIII.

Section 80.—I am entirely opposed to my colleagues' proposal that it should be made compulsory on the Court to award in every case the maximum damages here provided for. That proposal appears to rest on the assumption that the words "without reasonable and probable cause" imply in every case *mala fides*, but it is sufficient to point out that an ignorant landlord or tenant may sometimes sue or defend a suit without reasonable and probable cause, and be acting, nevertheless, in perfect good faith. In such cases, if the Court's discretion were entirely taken away, it would be compelled, against its will and conviction, to pass an unjust order for damages.

Section 81.—I object to the substitution of "shall" for "must" in sub-section (3), on the ground that the Collector may be trusted to exercise a proper discretion in this matter, and that the amendment must inevitably cause injustice in some cases.

CHAPTER IX.

The provisions of this chapter, though not of immediate practical use, are likely to prove most valuable hereafter in encouraging the execution of improvements by both landlords and tenants. The fact that improvements have hitherto been seldom undertaken by either party is partly attributable to the defective state of the present law. A marked change in the disposition of both landlords and tenants, or at least of the better class of tenants, in this matter may not unreasonably be expected from the introduction of the provisions of this chapter, under which adequate security will be given to the person undertaking an improvement. I have to suggest only that provision be made in section 89 for the service of a notice on the landlord by the occupancy tenant. The section permits the zemindar to appeal to the Collector in cases where he contests the tenant's right to make an improvement, or denies that the particular work is an improvement. It is essential, therefore, to the full exercise of this right that the tenant should be required to notify to him in every case his intention to make an improvement. Cases might otherwise occur in which an improvement which the tenant has no right to execute, or which is detrimental to the zemindar's property, would be commenced or even completed before the landlord has had an opportunity of submitting the matter to the Collector's adjudication.

CHAPTER XI.

I would preserve this chapter, although the preparation of tables of rates will be practicable in only a very few localities. These provisions might be usefully applied in tracts which have come under cultivation in comparatively recent times, and in which a large variety of rates has not become established.

CHAPTER XIV.

I am unable to suggest any improvement in the proposed procedure for the trial of rent suits, although I should be glad to see the realization of arrears of rent further facilitated, and must express my dissent from the following amendments adopted by the majority of the Conference.

(1) The application of the *patni* procedure to occupancy holdings without prior registration of such holdings. This appears to me quite impracticable, and fraught with the most serious danger to the occupancy tenants.

(2) In section 168 it has been suggested that the power of revision vested in the District Judge by the proviso should be of a general character, embracing questions of fact as well as questions of law. The effect of this proposal would be to subject every suit tried by a Subordinate Judge or Munsif to what will practically be an appeal to the District Judge, and thus to nullify the provisions of clauses (*a*) and (*b*), giving finality to the decisions of those officers in certain classes of suits. It is further opposed to the general practice of confining the revisional powers of superior Courts to questions of law alone. I am not, therefore, prepared to accept it.

I would, however, suggest for consideration whether the amount *decreed*, instead of the amount *claimed*, should not be adopted for the purpose of fixing the appealable limit in clauses (*a*) and (*b*). These clauses, in their present form, would give a plaintiff the option, by reducing his claim to Rs. 100 or Rs. 50 respectively, to secure a final decree, and cases are conceivable in which hardship would be caused if such an option were exercised. A plaintiff could similarly secure a right of appeal in every case by raising his claim above Rs. 100 or Rs. 50.

(3) The rejection of section 171. These provisions appear to me just to both parties, and their retention would reduce litigation by enabling the tenant to obtain damages at once, if they be fairly due to him, instead of compelling him to file a separate civil suit. In order, however, to provide against cases of dishonest action on the part of the tenant to secure the benefit of the section, I would add the words "in good faith" after "when a ryot has" at the commencement of clauses (*a*) and (*b*).

CHAPTER XV.

I would accept this chapter, with the exception of clause (*c*) of section 176, which is wanting in precision. It seems to me also desirable that the landlord should be permitted to object absolutely to the creation of a "registered and notified incumbrance," unless the tenant has a legal right, from the nature of his tenancy or otherwise, to create such an incumbrance.

The 15th August 1884. C. W. BOLTON.

DISSENT.

THE fundamental difference between the majority and myself has been that, while they claimed absolute rights in the land for the proprietors, I claimed rights in it for cultivators of almost all classes—non-occupancy as well as occupancy. On this point have hinged all our important differences, and with them only this dissent deals.

CHAPTER III.

The limitation to enhancement on tenures.—The instances of abuses quoted by me, which these provisions would have prevented, were the Government settlements of the Daminikati and of the Darjeeling Terai. The rates were quite fair in themselves, but the sudden rise broke many of the tenants' backs. The President himself cited the latter case and that of the Dooars as instances of hardship in which he had advised against the rates imposed, and acknowledged that many such cases were possible, though he considered that the provisions of the Bill would involve unwarrantable interference with proprietor's right.

Section 9.—With these instances in view, I advocated the retention of section 9 (while thinking the parallel provision of section 49 possibly redundant) because of the higher rate of enhancement allowed on tenures.

Clause 2, *section* 26.—*The presumption for settled ryots.*—This appeared to me to be merely enacting the recognition of Rai Kristo Das Pal's dictum that 90 per cent. of the ryots of Bengal were already occupancy ryots, while I gave an instance of a proprietor starting the settlement of a pergunnah with the assumption of the absolute converse. Of course this presumption, though not then enacted, was the starting point in the settlement with actual cultivators in the Sonthal Pergunnahs.

Section 28.—*A landlord acquiring occupancy ryots' interest.*—I defended this section on a number of detailed considerations, as well as on the maxim that, in Bengal, separate rights in the same land might not co-exist in one person, which was an essential one in the ryotwari settlements in the Sonthal Pergunnahs. The majority denied the authority of any such maxim.

Section 41.—*Limitations on enhancement by contract.*—The difference here was on the general question of restriction of free contract regarding which the majority took a strong and unanimous position. I did not gather that any of them had had experience of the frequent abuses of contracts purporting to be free between zemindars and ryots, except Mr. Newbery, who refused to give any opinion not based on the circumstances of his present district—Rungpore.

Section 42.—I objected to the provisos of this section, because they would, if admitted, have subverted, for instance, the Sonthal settlements, by which the initial rent was absolutely fixed on the land through out their term.

Section 43.—I objected to the prevailing rates provision on my Sonthal experience. The only genuine prevailing rates found there were in the north and south of the district, and were exceedingly and unfairly *low* rates. In the north they were sought to be enhanced by a prevailing rate of an adjoining pergunnah, which rate was practically fictitious; that is, it had been accepted by the ryots on the zemindar's consenting to abandon the cultivation of indigo.

Section 56.—*Initial rent of non-occupancy ryot.*—Following my Sonthal experience, I would substitute "a fair and equitable rent" for "such rent as may be agreed on, &c." The point of view is that there is really little actual difference at present between the occupancy and non-occupancy ryot in Bengal Proper; that this fact is covered in Rai Kristo Das Pal's dictum about 90 per cent. being occupancy ryots; and that this state of things is one which it is desirable to maintain while the enactment of this Bill would destroy it, unless the initial rent is guarded.

Section 123.—*Table of rates.*—Of course I have had the fullest experience of these provisions at actual work, and of their acceptability to zemindars, and the immense help they are in practice. The majority thought the evidence from so non-regulation an area as the Sonthal Pergunnahs insufficient. The recent re-settlement of Tappa Mahamadabad, at the instance of Rajah Ram Ranjan Chakrabarty of Hitampore, was conducted precisely as if the area lay in Regulation Beerbhoom.

Section 210.—*Limitation of contract.*—If landlords or ryots had been allowed to contract themselves out of the settlement under Regulation III, 1872, it would have been subverted in a very short time. The attempts to do so were frequent; but though we had no enacted provisions on the subject, the Commissioner ruled, in the very first case brought to his notice, that they might not be permitted.

Section 138, *clause* 2.—*Presumption as to khamar.*—In the Deoghur settlements in 1877-78 the village holders began by claiming each entire area as their nijjot, and this claim was the source of all the trouble. I do not see how there can be any other starting point, than that provided by clause 2, section 138.

W. OLDHAM.

DARJEELING,

The 15*th August* 1884.

J. E. S.—Reg. N. 9379C—200—26-11-84

No. 590R, dated Chota Nagpore, the 11th August 1884.

From—J F. K. Hewitt, Esq., Commissioner of the Chota Nagpore Division,

To - The Secretary to the Government of Bengal, Revenue Department.

With reference to your letter No. 544T—R, dated the 26th May 1884, I have the honour to submit the following report as to the practical working of section 39 of the Chota Nagpore Landlord and Tenants' Act I (B.C.) of 1879. I beg to add, with reference to your telegram of the 7th instant, that no conference has been held in this division, none being required, as the Bengal Tenancy Bill does not extend to Chota Nagpore.

2. The Act I (B.C.) of 1879 is in force in the districts of Lohardugga, Hazaribagh and Singbhoom. As very few rent-suits are instituted in Singbhoom, I have consulted only the Deputy Commissioners of Hazaribagh and Lohardugga, also Rai Jodunath Mookerjee, Government Pleader at Hazaribagh, as directed by Government.

3. The Deputy Commissioner of Hazaribagh states that he has consulted all the officers in the district vested with the powers of a Deputy Collector to try rent-suits, and that they all agree that no inconvenience has been experienced either by the courts or the parties in consequence of suits being brought by or against ryots collectively; that the provision has proved a great boon to the parties in reducing costs and enabling a single power-of-attorney to be used; that there has rarely been occasion to act under clause 3 of the section, as the plaintiff's pleaders have always taken care to separate, when possible, different causes of action in all such suits, and that the provision also enables combined action on the part of the ryots against unjust demands made by unscrupulous landlords.

4. Rai Jodunath Mookerjee's opinion coincides with that of the officers consulted as stated above. A copy of his letter No. 20, dated the 16th June 1884, containing his views on the subject, is annexed.

5. The opinion of the Officiating Deputy Commissioner of Lohardugga, Lieutenant-Colonel W. L. Samuells, and of the officers consulted by him, is on the whole unfavourable to the practical working of the section. He says it is attended with more disadvantages than advantages, and that the advantages are confined to the saving effected in stamp duty and costs. The disadvantages of the procedure, as described by the Officiating Deputy Commissioner, may be summarised as follows :—

(1) That it affords the landlord an effective means of harassing his ryots. They might be compelled to leave the village in a body, travel long distances to the court and back again perhaps several times, as when the suit has to be adjourned from time to time for non-appearance of some of the co-defendants, which generally happens when their number is large. Again, the decree might be *ex parte* against some defendants, and in these instances the case may have to be re-opened.

(2). That it seldom happens that the collective amount decreed by the Deputy Collector or the Deputy Commissioner is below Rs. 100. In that case an appeal would lie to the Judicial Commissioner and not the Deputy Commissioner, and the expenses would therefore be heavier.

(3). That in executing such decrees, there are difficulties in apportioning the cost which cause delay and inconvenience.

(4). That when there are a large number of defendants, the trial of the case becomes often complicated instead of the reverse, and the officer trying the case finds it difficult to exclude evidence which may not be admissible against one or more of the others. This objection applies equally in the trial of appeal cases.

(5). That though the law permits the Deputy Commissioner or the Deputy Collector to order a separate trial to be held in cases in which a joint trial would appear to be inconvenient, yet the provision could hardly be much availed of, as the inconvenience would not often be apparent until some progress had been made with the case, and then there would naturally be a disinclination to begin all over again.

6. Lieutenant-Colonel Samuells admits that often cases do arise in which it would be advantageous that separate suits be jointly tried, but he would have the law so amended as to leave the power of clubbing several suits together into one to the officer trying them, and not to the parties themselves.

7. I cannot say that I agree with the above opinion of the Deputy Commissioner of Lohardugga as to objection (1). I would remark that, if the landlord wishes to harass his ryots, he could harass them much more effectually by suing each man separately than the whole of them collectively, while on the other hand, as shewn by the Deputy Commissioner of Hazaribagh, the power of combining their defence, given to a number of ryots sued collectively, is a very effective means of protection against unscrupulous landlords. With regard to number (2), the following comparative statement of the costs incurred in the institution and maintenance of a suit for arrears of rent amounting to Rs. 100 against 25 ryots collectively, and individual suits against 25 ryots separately, shows conclusively that the costs to b th parties are much less under the system of suing the ryots collectively, and the difference between Rs. 21-9 costs and Rs. 79-4 proves how much cheaper, and therefore more desirable, the collective procedure is. The statement of costs does not include talabana for witnesses, as both parties usually bring their own witnesses; but if this were added, it would not affect the ultimate result.

Statement of Costs.

Cost of one suit for Rs. 100 against 25 ryots.	Rs.	A.	P.	Cost of each case against 25 ryots if sued separately.	Rs.	A.	P.
Stamp for plaint	7	8	0	Stamp for plaint	0	6	0
Talabana for service of summons on defendants, 8 annas for one and 4 annas for the rest . .	6	8	0	Plain paper	0	1	6
Plain paper	0	1	6	Talabana	0	8	0
Mooktearnamah	0	8	0	Mooktearnamah	0	8	0
Karpardaznamah when plaintiff does not appear personally. Stamp Re. 1 and attesting fee Re 1	2	0	0	Karpardaznamah	0	8	0
Mooktear's fees...	5	0	0	Attesting fee of karpardaznamah ...	1	0	0
				Mooktear's fees	0	3	3
Total ...	21	9	6	Total ...	3	2	9
				25 × Rs. 3-2-9= ...	79	4	9

8. As for objections (3) and (4)—objection 3 gives no details, but if some slight administrative inconvenience is felt in executing decrease, that is a small matter compared with the great benefit to suitors given by the procedure, and as for objection (4), I cannot myself see that it is any objection at all.

9. Objection (5). The number of cases in which separate trials have been ordered is not stated, but it is clear, from the wording of the objection, that orders of this kind have been issued in very few cases. If, as is shewn by Baboo Rai Jodunath Mookerjee, the plaintiff's mooktear gets up his case properly, such orders should hardly even be necessary.

10. I myself have no hesitation in recommending that provisions similar to those set forth in section 39 of Act I (B.C.) of 1879 should be introduced into the Bengal Tenancy Bill.

No. 20, dated Hazaribagh, the 16th June 1884.

From—Rai Jodunath Mookerjee, Government Pleader, Hazaribagh,
To—The Deputy Commissioner of Hazaribagh.

With reference to your letter No. 322R, dated the 13th instant, I have the honour to answer the questions proposed as follows :—

1. In my opinion the rule prescribed by section 39 of our Landlord and Tenants Act is a very wholesome one. During the period over 5 years in which the rule has been generally adopted by the people, we have had no inconvenience whatsoever.

2. On the contrary, it has been a matter of great convenience both to landlords and tenants either as plaintiff or as defendant. The provision reduces the labour and trouble of prosecution and defence, and makes the incidence of costs much less heavy than it would otherwise be if each man were to sue or be sued separately

3. In the course of my practice, I think there have been but a few occasions for adopting the rule provided by clase 3 of the section. I think the number of such occasions did not exceed one in the year, taking all the revenue courts collectively. The pleaders, before instituting collective suits, generally take care not to join parties having different pleas in defence, and it is where such difference could not be foreseen that occasions for action under clause 3 arise.

C. E. G.—Reg. No. 5956C—327—25-8-84.

THE REPORT AND REVISED BILL OF THE SELECT COMMITTEE ON THE BENGAL TENANCY BILL.

Preliminary and general remarks.

(1) WHILE thinking generally that the provisions of the Bill as now revised would be an improvement in the present law, at the same time, for the reason stated in his memorandum of dissent as well as for other reasons to be presently stated, I agree with Mr. Reynolds in the opinion that the interests of the ryots are not sufficiently protected.

Fatal defect in the Bill that it makes no provision for the reduction of rack-rents.

(2) I think it is a serious, and it may in its operation prove a fatal, defect in this Bill that, while greatly facilitating the enhancement of rents, not alone where they are unduly low, but in all cases, it yet not only contains no provision for the reduction of rents where they are excessive, but on the contrary it greatly facilitates the further enhancement of them

The fact of existence of rack-renting in Behar.

(3) The fact that the rents now paid by occupancy ryots in many parts of Behar are excessive no impartial person with a competent knowledge of that part of the country will deny. Whatever the test may be by which the fairness and equity of rents may be tried, it will be found that rents in Behar are excessive. If the standard of a fair rent be that adopted in the Irish Land Act, namely that it is such a rent, over-rent tenant could pay and yet prosper, the rents now paid in Behar are excessive as tried by this standard, for the ryots are admittedly far from prosperous; if the standard be the customary rents paid in former times, plus such proportionate enhancements as are fairly demandable on the score of increase in the value of produce, present rents are also excessive, for the rents paid in former times have in recent years been enhanced out of all proportion to rise in prices.

Want of sufficient attention to existence of excessive rents in Behar and of necessity for present relief to tenants there.

(4) It is the recognition of the fact that the rents at present paid by occupancy ryots in large tracts of Behar are excessive, and of the necessity of providing some remedy for this evil, which, I believe in a large degree, led some five or six years ago to action on the part of the Bengal Government which has eventuated in the present Bill. It would, however, seem that attention has been somewhat diverted from the fact of the present existence of rack-renting in Behar, in the course of the discussions and enquiries of the past five years, and that the necessity of affording some immediate relief to the present generation of Behar ryots has rather dropped unto the background in the closer attention paid to the question of devising an equitable scheme for enhancing rents in Bengal.

Present Bill affords no immediate relief to the present generation of Behar ryots, while there is serious danger of its aggravating their difficulties in future.

(5) As far as I can judge it is doubtful whether the present Bill will afford any relief to the present generation of ryots in Behar. But there is on the contrary grave risk that the provisions for a survey and record of rights, however good in themselves, will aggravate the difficulties under which the ryots are now labouring, for, if unaccompanied by provisions for reducing excessive rents, these provisions will, by clearing up existing confusion as to areas of holdings and amounts of rentals, deprive the ryots of what is at present their greatest safeguard, namely the power of combining and of opposing artifice to exaction.

(6) Everybody who has had experience of zemindari management knows that the ryots now as well as in the days of Sir John Shore "cultivate lands of which there is no account and hold them in greater quantity than they engage for, by means of which they pay rents and cesses which appear extortionate. They hold lands at reduced rates by collusion and obtain grants of land (*i.e.* from zemindar's subordinates) fit for immediate cultivation on the reduced terms of waste land."

All this will be put an end to by a survey and record of rights, and it is of course right that such practices should cease, but it is equally right that the "extortionate rents" should be made to cease at the same time. A survey and record of rights *at existing rates of rent* will have this practical effect that it will bring to light all lands now held by collusion or otherwise in excess of the areas shewn in the existing rent-rolls, and these lands being assessed at present rates of rent a large increase in existing rentals will immediately follow on the ground of increased area alone. Further, the survey records will afford a safe and sure basis for future enhancements on the ground of rise in prices, for which the Bill affords greatly increased facilities. I do not think that anybody will hold that Behar ryots as a class can afford to pay enhanced rents *on any ground whatever*, and therefore I think that a Bill which must inevitably lead to enhancement, and which cannot in any circumstances lead to a reduction of rents, is most dangerous to the interests of Behar ryots. It is unnecessary to say that I am not arguing against a survey and record of rights as such, for, on the contrary, I think that without them there can be no satisfactory or final settlement of the rent question in Bengal and Behar, but what I wish to point out is that a survey and record of rights at existing rents, and, without provision for fixing fair and equitable rents where they are now excessive seems to me to be a very dangerous experiment.

The Bill does not in reality enable occupancy ryots to hold at fair and equitable rates. It does so only in words.

(7) The Bill does not, I think, make adequate or indeed anything more than mere nominal provision for securing to occupancy or other ryots the advantage of holding their lands at fair and equitable rates of rent, and yet this is the one thing they require before and beyond all other rights and privileges. The extension

of occupancy rights, as was pointed out in Mr. Reynolds' note, dated 11th December 1880, on enhancement of rent in Behar, is a question of little practical importance in that province, "the right to hold land being a mockery, and the exemption from eviction a worthless boon," unless the ryots are enabled to hold at a fair rent and not at whatever rent the landlord chooses to demand or has hitherto succeeded in levying. The Bill it is true in words declares that an occupancy ryot is entitled to hold his land at a fair rent, but then the word "fair" means the rent last fixed plus any enhancement demandable on the ground of rise in prices since the rent was last fixed. If the rents as last fixed were excessive, it follows that the ryots will under the Bill have to go on paying these excessive rents for all time. All the Bill does is to facilitate the enhancement of them It would therefore appear to me to be an abuse of language to say that this Bill enables occupancy ryots to hold their lands at fair and equitable rents. It does so in words, but not in fact and reality. The ryot is irretrievably bound by the presumption that the rent when last fixed was fair and equitable. He cannot go behind this presumption and shew that as a fact it is not notoriously opposed to the truth, nor can he take advantage of the fact that his neighbours are paying a lower rent for the same class of land; while the landlord, on the other hand, is not at all bound irretrievably by the same presumption, for he has only to shew that any particular ryot's neighbours are paying at a higher rate of rent than he for the same class of land, when the ryot in question becomes also liable to pay a higher rate. Surely if an occupancy ryot's rent may be enhanced to the prevailing rate paid by his neighbours for the same class of land, when he is paying at less than that rate, it is equitable that he should be entitled to demand a reduction to the prevailing rate paid by his neighbours for the same class of land, when he is paying at more than that rate. Is it equitable that a ryot should be precluded from taking advantage of his neighbour's acts when there is a question of reducing his rents, while he is bound not merely by his own acts, but by those of his neighbours also, when the question is of enhancing his rents? I am aware that the Secretary of State has laid down the principle that there is to be no reduction of rents under the present Bill. While admitting the reasonableness of that decision as regards Bengal I venture to think that it is one which is to be regretted as regards Behar. But assuming that the question of reducing rents is not open to discussion, I would still suggest that it is not inconsistent with the decision of the Secretary of State to abolish altogether, as a ground of enhancement, the "prevailing rate," or at least if it be retained as a ground of enhancement, it should, I think, be also made a ground of reduction of rents.

The ryot is bound irretrievably by the presumption that the rents when last fixed were fair and equitable and cannot prove the contrary though true; the landlord is not so bound: injustice of this.

Suggested that the "prevailing rate" be abolished as a ground of enhancement.

(8) I likewise think that the principle of enhancing rents in proportion to rise in prices of staple produce is a very dangerous one. This is the first time that it has been proposed to introduce this principle of enhancement into India, or as far as I know into any country. It is a principle which I think should not be accepted without some evidence of its successful operation in other parts of India, if it has been anywhere tried in practice.

Objections to principle of allowing enhancements on ground of rise in prices alone.

That this principle has nowhere been tried in practice.

(9) In a report, dated 10th February 1883, printed in page 494, volume II, of the Report of the Bengal Government on the Bengal Tenancy Bill, it is shewn that in no part of India save Behar have rents in fact been raised during the past 40 years in proportion to the rise in prices of agricultural produce during that period, or to anything like that proportion.

That rents have as a matter of fact nowhere been raised in proportion to rise in prices in India or elsewhere.

In the country of Ireland in which I am now writing I learn from the Land Sub-Commissioners and from practical farmers that rents are in many cases being now reduced by the Land Courts though prices have increased since the present rents were last fixed, and this though the present rents in these cases had remained unaltered for 40 years. Those who are not satisfied that they have explained all things Irish by merely denouncing them will seek for some explanation of the action of the Irish Land Courts. The explanation given is that though the price of agricultural produce has increased the wages of labour, the price of live-stock, and the expenses of the other elements which go to make up the cost of production have increased in very much greater proportion. The increment in the price of produce has, it is said, been swallowed up in the increased cost of production, thus leaving the tenant less able to pay the existing rent than he was 40 years ago.

In Ireland it has been found necessary to reduce rents though prices have increased in many cases since the rents were last fixed.

(10) From a consideration of these facts I am led to the conclusion that it would be very unsafe to allow a rise in rents on the ground of rise in prices *per se*, and if such rise were to be allowed at all there appears to be no other reason than mere symmetry of statement for enacting that the rise in rents shall be *proportionate* to the rise in prices.

(11) It is obvious that what the landlord is entitled to in justice is an increase in rents proportionate to the increase on the tenants' *net profits* and not in proportion to rise in prices. But it may be said it is impossible for the landlord to prove the amount of increase in the tenants' net profits or even on the gross value of the produce. I am unable to see in what the difficulty consists. If landlords in Behar and Bengal have hitherto neglected to provide themselves with the *data* which would enable them to prove increase in the value of the produce, and have therefore found it difficult to

Landlords entitled to rise in rents proportionate to rise in tenants' net profits, not to rise in prices.

Objections to this principle, answer to.

obtain enhancements in the courts, the difficulty, though an unfortunate one for them, is not inherent in the circumstances of the case, but it is entirely due to their own want of prudence. If landlords had chosen to enter from time to time into written engagements with their ryots, shewing the amounts and rates of present rents, as they were legally bound to do; if they had made surveys and maps of their ryots' holdings, as they might have done under the existing law at a trifling expense; if they had further kept trustworthy records of prices ruling in local markets and of the weighments of produce of the various kinds of land in their own home farms and in bhaoli lands, all of which they might easily have done, they would have experienced little difficulty in obtaining through the courts the enhancements to which they were legally entitled under the existing law on the ground of rise in the value of produce. But not content with the fair enhancements to which they would be entitled under the existing law, they in some cases preferred to seek excessive enhancements without recourse to law or by extra legal means, and in others they neglected to collect trustworthy data on which the courts could act. Because they have on this account failed to obtain the enhancements to which they conceive themselves entitled have they now a right to ask that Government shall not alone alter the established grounds of enhancement, but actually collect for them the evidence on which future enhancements are to be secured? I do not think they are fairly entitled to ask anything of the kind. If a rise in rents is to be allowed in proportion to rise in prices, and rise in prices is to be proved conclusively by the mere production of the Government Gazette, then enhancement of rents will follow so easily and to such an extent that all the provisions of the Bill which tell in the ryots' favour would be very much more than counterbalanced by the enactment of the sections to which reference has been made.

All the provisions in favour of the ryot are more than counterbalanced by the increased facilities for enhancement afforded by the Bill.

The provisions in the ryots' favour to which so much exception has been taken do not appear to me to confer a single new privilege or right upon the ryots; they merely shift the burden of proof so as to enable the ryot to obtain in practice what he is already declared entitled to in law; or where they make any substantive change at all, they merely bring the law into harmony with existing custom and practice; but the provisions for the enhancement of rents in proportion to rise in prices is a substantial innovation which will entitle one class of the community to a large amount of wealth to which they are not now entitled at the expense of another class of the community. Further, this innovation will not only entitle landlords to a new and large increase in their incomes over and above any increase to which they are now entitled, but it will secure this increase to them in practice without any trouble or expense on their part To make the price lists published in the Gazette conclusive evidence of rise in prices seems to me to be nothing less than to have Government supply proof for a particular class of cases and for the benefit of a particular class of the community to the disadvantage and injury of another class.

Suggestions as to modification of the scheme of enhancement laid down in the Bill.

(12) I would therefore earnestly urge that the grounds of enhancement should be left as they now are, or if the principle of allowing a rise in rents proportionate to rise in prices be accepted at all—

1. That the price lists given in the Government Gazette be only presumptive evidence of rise in prices.
2. That on such presumptive evidence being given by the landlord, it be at least open to the ryot to shew—
   (*a*) That the price lists are incorrect, or
   (*b*) That his net profits have not increased in proportion to the rise in prices.

In the one case the rise in rent should not exceed the proportion of rise in prices as proved by the ryot, and in the other it should not exceed the proved rise in his net profits. Even if this suggestion be adopted I would still think the facilities given for enhancement of rents very dangerous at least in Behar, where I think further facilities for enhancements are not required. Unless the occupancy, ryot is enabled to hold his land at a fair rent, it is little better than a mockery to tell him he may transfer his interest at his pleasure, or that his landlord has no power to evict him. Nobody will give him anything for his interest, and the landlord has no desire to evict him.

M. FINUCANE.

J. E. S.—Reg. No. 6343C—327—4-9-84.

NOTE ON BASTU IN THE SONTHAL PERGUNNAHS.

THE diversity of custom, or of mere practice claimed as custom. As regards *bastu*, recorded by the settlement, was very great, and varied from a high and separate assessment on it, even when it happened to be an integral part of the cultivator's holding, to a complete absence of claim on it, no matter how occupied and treated by the zemindar. For these varying conditions the district falls into three divisions—

I. The north-east, about 500 square miles or one-tenth of the district. This tract belongs to Northern and Central Bengal in character. The old tenures have been extinguished, there is much sub-infeudation, and the changes of proprietors within the last fifty years have been frequent. The villages are old and full of fine trees, and the houses are good and raised high above the flood-level. The cultivated land is subject to inundation, and some of it to river action. The inhabitants are Hindus and Musulmans, a good number of the former being Brahmins and Kayasths.

Bastu is treated as quite distinct from cultivation. It is assessed as high as Rs. 5-9-10 a bigha, and this rate was acknowledged by the settlement. The commonest and the rate is Rs. 5 for *bastu* and Rs. 2-8 for *u bastu* per bigha. The lowest rate for *bastu* is Re. 1 per bigha. It is immaterial what the occupant of *bastu* does with his cultivation. *Bastu* is treated precisely as building sites in a town, except that there is a fixed rate for it

In this tract *bastu* is transferable by the occupant, subject only to registration at the zemindar's cutcherry, and in some villages to a fee.

How this rate was gained I cannot exactly say. That it is comparatively recent is indisputable. In one locality in the tract cultivators *bastu* is not assessed, but 6 annas per house is taken from non-cultivators. Again, throughout the tract Sonthals, who never build in the old raised and planted village sites, but put their huts on a bare strip close to their fields, are not assessed for *bastu*. Moreover, in the two pergunnahs south of this tract the villages are of exactly the same character, and so is the country which used to belong to Murshidabad ; but each pergunnah has remained in the same family since long before the British accession. They are indivisible properties, there has been no sub-infeudation, and the old simple tenures survive. At the settlement their proprietors attempted to have the *bastu* assessed, but the occupants, particularly the Brahmins and Kayasths, strongly resisted and claimed their *bastu* in terms as *lakhiraj*, or the equivalant of *lakhiraj* ; and the Settlement Officer who had begun to assess them gave way, and has recorded that *bastu* in their villages is governed by "previous custom," without specifying what that custom is.

Without describing how an assessment on *bastu*, as distinct from cultivation, has been gained, it is noticeable that in the Sonthal Pergunnahs it only exists where there has been a constant change of proprietors, much sub-infeudation, and complete extinction of old tenures (*e.g.*, the village system). Also that *bastu* so assessed has became transferable with or without a fixed customary premium to the zemindar. (This was probably the average by which the high rate was gained.) In the Southal Pergunnahs the rents of this class of *bastu* are governed by the settlement, but without it there seems sufficiently distinct custom to regulate them. Part of the tract has been excluded from the settlement, and in it *bastu* rents can only be raised on transfer or by contract.

II. The centre and south, including the Government estate (1,366 square miles). The whole tract is some 2,500 square miles It belongs in character to Western Bengal. The old tenures, and the families of the old proprietors, survive in most parts of it. Most of this country has been cleared by Sonthals who abound in it. The Hindus and Musulmans are mostly of primitive race themselves. The country is not subject to inundation, and, unlike tract No. I, village sites are abundant, and are frequently changed. There are nevertheless many old villages with fine trees, good houses, wells and tanks. This tract has been much more recently cleared and settled, and is still more thinly populated than tract I. Except the two pergunnahs which form the Pakour sub-division, and which, in physical features, are exactly the same as tract I. These are the areas alluded to in which the proprietors tried to assess *bastu* and failed. Its custom as regards *bastu* seems to have been derived from the rules for the Government estate, the settlement of which began in 1837, and the rules for which were arbitrarily framed by the successive officers who had charge. In it the cultivators or farm labourers' *bastu* is never assessed ; not even when it lies in a place which from a purely agricultural village has suddenly grown into a trading town (*e.g.* Sahibganj, East Indian Railway). But all non-cultivators, and all cultivators who have ceased to cultivate, while retaining their cultivation, are assessed. This *bastu* assessment (*basauri*) is on a scale which does not follow the area of the land, but the occupation of the holder.

Outside the Government estate in this tract, No. 2, the actual cultivator's *bastu* in a purely agricultural village was never assessed as a holding in itself, though it was often measured with his land and included in the assessment of it When this was done, it was invariably classed as "Two-crop high land" (*do-fasala bari*), the rate for which was four or five annas.

But when the purely agricultural village suddenly became a town (*e.g.* Dumkah), the actual cultivator's *bastu* therein came under separate assessment as a town-holding. But non-cultivator's *bastu* was separately assessed almost everywhere throughout tract II. The

principles were different. Potters and village blacksmiths and barbers were nearly always exempted. In one large Tuppeh, Brahmins, Kayasths, Khsatris, Baidyas, and *Musulmans* are exempted. All other non-cultivators are assessed. The general rate of assessment is 4 annas per katta (= Rs. 5 per bigha) on all non-cultivators, but in some places the scale, like that of the Government estate, is according to profession.

This was in the Birbhum estates of the Naga family. The Rajas are Pathans.

III. The third tract is the rest of the district, about 2,500 square miles, which is precisely the same in character as South Monghyr and South Bhagulpur; that is, it belongs to Behar. There has been no sub-infeudation. The old tenures and old proprietors all survive. Village sites are plentiful, and are frequently changed. In this tract there is no such thing as *basauri* (rent on *bastu*). There is bazar rent and town land rent which is quite distinct. The *bastu* of non-cultivators is sometimes assessed as cultivation, and otherwise is not assessed at all. That is, in most villages the *bastu* has been measured with the cultivation and classed as "two-crop *bari*" and assessed at 4 or 5 annas. *Bari* in the Sonthal Pergunnahs is not used in its primary meaning of *homestead*, but in its secondary sense as high land—and all high land, or what is known in Madras as dry cultivation, however remote from a dwelling is *bari*.

The three tracts then are—

No. I, in which *bastu* is a distinct tenancy; and property with a distinct assessment on it.

No. II. in which only the *bastu* of non-cultivators is treated as distinct from cultivation.

No. III, in which, in agricultural villages, *bastu* is not distinguished for assessment at all, only sites in towns and bazars are so distinguished.

From tract No. I, no question about *bastu* came up in my time; from Tracts II and III several arose. They were so diverse that each had to be settled on its merits. Few could be decided by custom, because nearly all arose from a complete change of circumstances, with no parallel to the new conditions in the vicinity. The two most important cases were the following: Pergunnah Sultanabad is the southern half of the Pakour sub-division; it borders Murshidabad and Rampur Hât sub-division. The Bengali portion assimilates closely to Murshidabad and Nuddea.

It lies in my Tract No. II, because of the absence of sub-infeudation and of change of proprietors, and b cause of the existence of the old simple tenures and the actual facts as regards *bastu*. But in all physical features it belongs to my Tract No. I.

The zemindar, Maharaja Gopal Sing, claimed at settlement an assessment on the Bengali (*i.e.*, non-sonthali) *bastu*. The Settlement Officer at first conceded the claim, but on the strong opposition and numerous appeals of the Bengali tenants, had to withdraw and compromise. This was because he could find no existing custom or local precedent, and by these he was bound. He evidently thought the *bastu* should be assessed, and he did assess it when the opposition was not strong. Where it was strong he recorded that *bastu* was governed by "former custom." But he did not say what the custom was, and this form of record was famed with the object of letting the zemindar assess when he got the chance.

The opponents claimed their *bastu* irrespective of area and of the use to which they had turned it as *lakhiraj*, or the equivalent of *lakhiraj*, using these terms. Most of these persons were agricultural middlemen sub-lessors.

The decision in this case. The Sultanabad *bastu* appeal is in the Bhagulpur Commissioner's office.

Tuppeh Hendue, 450 square miles, is in my tract No. III. The Settlement Officer's record for it was that there was no *basauri*. The zemindar has appealed and claims to assess *bastu*, whether of actual cultivators in agricultural villages or not, on both equitable and customary grounds. A detailed enquiry into this subject had been ordered and was not completed when I left. I knew of no custom in the area concerned which would support the claim.

The individual cases which arose from tracts II and III fell severally into one of the following cases:—

1. *Bastu*, an integral part of the actual cultivator's holding in a place which had been recently an agricultural village, and which had become a bazar (*e.g.* Dumkah and several railway stations).

2. *Bastu* in an agricultural village, originally of the above character, but the holder of which had alienated or sub-let his cultivation.

3. *Bastu*, originally of the above character, which the holder had converted into a shop-site, warehouse, or storehouse, or banking or manufacturing premises, while he still retained some cultivation.

4. *Bastu* which, or part of which, the holder had sub-let.

5. *Bastu* which, with the buildings on it, he had sold.

6. *Bastu* which the holder had much improved by good dwellings and offices, trees, wells or even a tank.

I had no case of *bastu* retained by the cultivator after he had ceased to hold cultivation under the landlord of the *bastu*, and had taken cultivation under another landlord.

Cases of claims by landlords in all the above cases came before us, and in none could we find any local custom substantiating the claim. What custom there was indicated apathy or tacit consent, and was all in favour of the *bastu*-holders who, in the east, or North

and Central Bengal part of the district, invariably claimed it as *lakhiraj*, and in the rest or West Bengal and Behar part, as *mokurari*. In the great Dumkah *bastu* case (Grant *versus* Bisheshwar and others), several zemindars and zemindari agents were examined, and, though they refused to say that *bastu*=*mokurari*, they deposed that it was virtually the same viz., that the landlord could not eject from *bastu* (and therefore had no use for enhancing), and that he could not even eject a squatter, but could only get such rent as the squatter chose to give, or as a court might award; and that he could not interfere with *bastu* in any way, or prevent its being sub-let, transferred, or used for mercantile or manufacturing purposes.

In this suit defendants' predecessors had got some three bighas in the heart of Dumkah for Rs. 3 a year. According to present rates at Re. 1 per katta, its rental would be some Rs. 60. They had made a small street of shops in the holding. The defendants contested Mr. Grant's right to interfere with them in any way, and claimed the holding as virtual *mokurari*. They were cast on other grounds, and the High Court in upholding me did not notice the plea of local custom. The land was pure *bastu*, that is, when it was given, Dumkah was a purely agricultural village, and though the rentors were amlaha, the holding was homestead and garden.

The foregoing points to a time, and it very recent, when most of the country was waste, and when it was a great object to get settlers. Conditions have changed so fast that there has been no time for a recognized custom in favour of the landlord to grow up in my tracts II and III. As I have said, in the settlements of them there have been only two claimants to *bastu* rent (*basauri*); and in my tract III, except in the cases of well-known bazars, the Settlement Officers have recorded for nearly every village, whether it contained shops or not. "There is no *basauri*." In some cases this record has been made for villages, parts of which are good-sized bazars. As regards case 1, there were several instances in the Government estate, (*e. g.* Sahibganj, East Indian Railway). We did not assess these holders as long as they were only cultivators or farm labourers.

The area of Dumkah town was excluded from settlement. Mr. Grant made a private settlement this year and assessed such holdings, giving them the lowest rate on his scale of town holdings. The settlement has yet to stand the test of the courts. It was, however, accepted by these people, and the fact is an instance of how custom may be made.

Case 2.—The Sultanabad case was the best instance of this. There were other individual cases, and the *lakhiraj* claim was always made.

Case 3.—A very few claims to assess in this case were coming in latterly. My personal knowledge is that most of the persons under it were let alone, except in the Government estate, where we applied the *basauri* scale.

Case 4.—This was the commonest case and was becoming very frequent. Often the sub-lessee's rent was treble or quadruple that of the original holding, and there might be several sub-lessees As the gross rental of the village had been fixed for a term, the zemindar could not participate The headman-lessee was invariably the claimant, but there was no provision for his participating, nor did he seem to have any right. In the case of cultivation, no higher rent than at the recorded rate could have been recovered, but often the *bastu* had not been measured or assessed or classed, nor would an application of the rule have satisfied the claimants, or barred the sub-lessor's gains. The sub-lessees in such cases paid in advance. There were several conflicting decisions, but the general feeling was that this feature must be left to be dealt with at the next settlement.

In the Government estate we made the sub-lessee when discovered (if we did not eject him), a new original lessee, and assessed him by scale.

Case 5.—This, too, was one of the commonest of cases as an exemple of the claim to *lakhiraj* or *mokurari*. Tenants who admitted restrictions on the transfer of this cultivation repudiated them as regards their *bastu*. The new settlers in Dumkah and Modhupur, East Indian Railway (which has also suddenly grown from a purely agricultural village into a large bazar), nearly all acquired their homesteads in this way. Mr. Grant, affirmed by the High Court, has broken down the claim in Dumkah. In Modhupur it has had a 13 years' start, and is fast growing into a recognized custom.

Case 6 —The Sultanabad case is the best instance. There were others, scattered and individual. In the Government estate such holdings are not assessed merely because they are valuable. They do not come under any of the fixed rates except that for "two-crop high land. Then we do not allow sub-letting, and assess them at once, if they are dissevered from the cultivation of which they were originally a part.

There remain the cases of ryots who have been ejected from or lose their cultivation from any cause, or who desert, and of widows, orphans or minors who are unable to carry on their deceased relative's cultivation. The existence of the village headman system prevented many of these from coming to notice. The general practice in my tracts II and III was for the house to follow the land, but a marked exception was when the house was good and the *bastu* had been made valuable. Then an attempt was rarely made to oust the occupant, merely because the land had gone. Ejectments (except of trespassers), have practically ceased. I have seen cases of ruined ryots and of widows and orphans remaining on the *bastu* after the cultivation had gone. I have had cases of attempts to turn out the latter class, but this was when the headman was weak. Ordinarily the headman disposes of the *bastu* where it is not exceptionally valuable, and then such heirs as they may take it.

The foregoing follows *bastu* from my tract I, in almost the most modern conditions to be found in the province, through tract II, which is fast undergoing changes to tract III, which is probably as primitive as any in Bengal. It will be seen that we have had no difficulties with the modern or developed treatment, and have had no instance of cases in which the zemindar could apply the screw to the ryot by attacking his *bastu*. Our difficulties have been with the cases in which such custom as exists is all in favour of the ryots, and would give altogether to them the benefits arising from changes in the locality. The cases with which we felt it most difficult to deal on any general equitable rule were those in which the ryot, while still retaining at least a portion of his cultivation, converted his *bastu* land into trading premises or sub-let it.

W. OLDHAM.

DARJEELING,
The 18*th July* 1884.

Rajmehal ...
- Akburnagur, bastu at Re. 1.
- Kankjol, Tarof Basna—bastu Rs. 5, udbastu Rs. 2-8; in tarof Assila Mohobutpur—bastu Rs. 5, udbastu Rs. 2-8.
- Jamni not due from cultivators.
- „ Chitowlia, 6 annas per house,
- Mohadnagur ... Bastu, Rs. 5. Udbastu Rs. 2-8.
- Chitowlia not due from cultivators
- Enayetnagur, sabek dastur.

Pakour ...
- Ambar, Kuwarpur ...

		Rs.	A.	P.
Bastu	...	5	9	10
Udbastu	...	2	12	15

- and in some villages as sabek dastur.
- Sultanabad as before.

Jamtara ...
- Kundohit. From non-cultivators as before.
- Pabia as in the case of Kundohit.

Godda ...
- Barkop, Nehikai.
- Passai ditto.
- Jamni Harnapur, ditto.
- Manihari, ditto.
- Patsanda, ditto.
- Amlomotia, ditto.

Deoghur ...
- Bamongawan. No Basauri.
- Teor. Ditto.
- Rohini. Ditto.
- Pathrol. Ditto.
- Sarat. Ditto.
- Sarawan. Ditto.

Dumkah ...
- Darunmaureswar. Non-cultivator should pay at 4 annas per katta, or Rs. 5 per bigha.
- Belpatta In certain villages no basauri or other due at 4 annas per katta from non-cultivators.
- Mahammadabad. Brahmins, Kayasths, Khetri, Baidya and Mosulman will not pay; other castes will pay as before. In Sonthali villages basauri is due from men other than cultivators.
- Hendwa. Kendna. No basauri.
- Kamardiha. Ditto.

C. E. G.—Reg. No. 4493C—300—4-8-84.

No. 2062, dated Calcutta, the 11th August 1884.

From—C. S. Bayley, Esq., Offg. Registrar of the High Court of Judicature at Fort William in Bengal,

To—The Secretary to the Government of Bengal, Revenue Department.

HIGH COURT.

English Department.

Civil.

Present:

The Hon'ble L. R. Tottenham, one of the Judges.

In continuation of Mr. Wilkins' letter No 1835, dated the 27th of June 1883, and in accordance with the request of His Excellency the Governor-General in Council, I am directed to forward, for the information of His Honour the Lieutenant-Governor, a copy of a letter* which has been addressed by the Court to the Government of India on the subject of the Bengal Tenancy Bill.

*No. 1986, dated 8th August 1884

No. 1986, dated Calcutta, the 8th August 1884.

From—C. S. BAYLEY, Esq., Offg. Registrar of the High Court of Judicature at Fort William in Bengal,

To—The Secretary to the Government of India, Legislative Department.

HIGH COURT.

English Department.

Civil.

PRESENT:

The HON'BLE SIR R. GARTH, KT., *Chief Justice.*
The HON'BLE H. S. CUNNINGHAM,
" H. T. PRINSEP,
" A. WILSON,
" L. R. TOTTENHAM,
" C. D. FIELD,
" J. F. NORRIS,
" J. Q. PIGOT,
" W. MACPHERSON,
" H. BEVERLEY,
Judges.

I AM directed to acknowledge the receipt of your letter No 785, dated the 5th May, in which the attention of the Court is invited to the report of the Select Committee on the Bengal Tenancy Bill, and the advice of the Judges is asked on certain matters connected with the proposed measure.

2. The Court has carefully considered the three points indicated in your letter as those upon which their assistance is specially desired. The Select Committee wish in the first place to learn what modifications it may be desirable to make, whether by rules or otherwise, in the Code of Civil Procedure with a view to expedite the trial of rent-suits, and in particular whether it is desirable that landlord should be empowered to institute, by means of a single plaint, suits, for arrears against a number of raiyats holding independently of each other. It is proposed in section 163 of the draft Bill to exclude rent-suits from the operation of sections 121 to 127, 129, 305, and 320 to 325C of the Code of Civil Procedure. This proposal is free from objection, but the Judges fear that no modifications other than those indicated in this section can be made in the ordinary law applicable to civil suits without opening the door to evils which would outweigh the advantages to be derived from increased expedition. The suggestion made in the report of the Select Committee, that suits for arrears of rent should be allowed to be brought by means of a single plaint against a number of raiyats holding independently of each other, would, the Judges believe, be impracticable and lead to delays worse in all probability than those now experienced. The defences set up in a number of suits might be so various that any provision of this nature would very frequently lead only to confusion. The proposal seems to have originated in paragraph 5 of the letter noted in the margin from the Government of the North-Western Provinces and Oudh, to the Government of India. It is there stated that "in the bulk of rent cases there is no dispute as to the correctness of the claim. It is generally certified by the village patwari, and not contested by the tenant, and all that the landowner wishes is assistance to realize his claim, by putting in action the machinery which will compel the tenant to pay the sum due, without which the landholder cannot pay the Government demand." To meet this state of things Sir George Couper suggested the remedy now under consideration. How far the proposal would, in the North-Western Provinces, meet the difficulty felt, the Judges are unable to say, but they are convinced that in Bengal, where patwari papers are not available, it would fail in its object. The Judges have carefully considered the question whether, leaving the law unaltered, any changes could be made in the executive orders issued to Subordinate Judicial Officers with a view to expedite the decision of rent-suits. The orders at present in force seem to provide almost all that is necessary to secure the postponement of all other suits to rent-suits, and the prompt decision of all rent-suits which are not contested. The Court proposes, however, to direct that in future undefended rent-suits shall have priority over short suits, though both shall, as far as possible, be taken up on the date fixed. It is probable that for their own sakes the majority of Munsifs at present adopt this procedure, but it will now be rendered imperative for them to do so. The rules direct that every summons in any suit for arrears of rent (other than a suit for enhancement) shall command the defendant to appear at the expiration of fourteen clear days after the service thereof. The Judges have considered the possibility of compelling the defendant's appearance within a shorter period; but looking to the difficulties of communication in many parts of the country, they are of opinion that no change in this direction would be expedient.

No. 5A, dated the 30th January 1882.

Vide page 222 of the Court's Civil Rules and Circular Orders.

3. It would, the Judges believe, be extremely dangerous to enact any such provision as that proposed in clause (*b*) of paragraph 2, to restrict the right to claim a re-trial where a decree has been given *ex parte*, and on this point they agree entirely with the Select Committee. It is true, as has been represented to the Committee, that landlords are frequently involved in unnecessary expense and delay by the tactics of their raiyats, who deny service of summons; but it seems absolutely essential, in order to prevent fraud by dishonest agents of landlords in collusion with the process-servers, that raiyats against whom decrees are passed *ex parte* should have an opportunity of applying for a re-hearing.

4. The third suggestion, which, like that discussed in the last paragraph, was made to the Select Committee by the Hon'ble the late Rai Kristodas Pal Bahadur, is that a defendant in a suit for arrears should not be allowed to appeal from a decree passed against him, except on depositing the amount of the decree. This proposal, which might no doubt serve to obviate some of the inconvenience, expense, and delay now caused to zemindars by recalcitrant raiyats, would however, it is believed, in many cases involve the defendants in very serious hardship, and the Court is not therefore disposed to recommend its adoption. It may be observed, further, that it is always open to a zemindar to execute his decree notwithstanding that it is under appeal, in which case, if execution is stayed, the law provides that security shall be given for the due performance of the order that may ultimately be passed.

5. The Judges are fully sensible of the necessity for affording assistance to the landlords in the speedy and cheap recovery of the rents due to them, and are aware that at present much real cause for complaint exists. It would, therefore, have been a matter for satisfaction to them had they been able to accept any of the suggestions put forward for the simplification of procedure and the removal of the means now too often employed by raiyats to harass their zemindars. It is, however, scarcely possible legally to facilitate the recovery of rents without putting into the hands of unscrupulous landlords or their subordinates weapons which may be easily used for the oppression of their tenants.

6. The solution of the difficulty must, the Judges believe, be sought in a direction different from that suggested. The evils of which the landlords chiefly complain are the expense and delay involved in suits against their raiyats. The true remedy for these is to be found in executive rather than in legislative action. The main expense to which a landlord seeking to recover his rents by means of the Civil Courts is put, is the necessity for paying the heavy institution fees levied. Before the transfer of rent-suits from the Revenue Officers to the Civil Courts, effected by Act VIII (B.C.) of 1869, the fees levied in these suits were only one-fourth of those payable in ordinary suits in the Civil Courts. When the jurisdiction was altered, it was considered anomalous that relief should be given more cheaply in the same Courts in one class of suits that in another, and the fees in rent-suits were increased fourfold. A reduction in the fees to their original standard would afford a very appreciable relief to landlords; and though some loss would be incurred by the Government, the revenue derived from Court-fees so largely exceeds the expenditure on Civil Courts and establishments that it might be possible to give up some portion of the surplus for the benefit of suitors. Some relief might also be given by holding out to raiyats inducement to compromise their suits or not to defend them, similar to those provided in small causess in the Presidency Towns by Act XV of 1882, section 73.

7. One of the principal causes of the delay in the proceedings is to be found in the frequent adjournments which are rendered unavoidable by the heavy pressure of work upon the Subordinate Judicial officers. In many places where more than one Munsif is stationed, an officer has, in accordance with a suggestion made by Sir Ashley Eden, been specially set apart for the hearing of rent-suits, and the evil has thus to some extent been diminished. Where, however, this is the case, the work devolving on the Rent-suit Munsif is not unfrequently more than he can perform with punctuality and despatch, and in many places where there is only one Munsif, the most strenuous exertions on the part of that officer fail to prevent the accumulation of arrears. In view of these facts, it seems to the Judges that an increase in the Judicial Staff and their establishments in these provinces can alone prevent the delay now too often experienced. The sanction of the Local Governments has on several occasions recently been obtained to the appointment of extra Munsifs to deal with accumulations of arrears, and the Court has now under consideration a suggestion which has been made to enable it to meet sudden emergencies with greater promptitude than is at present possible.

8. Regarding the general provisions of the Bill, apart from its purely judicial aspect, the Court does not propose as a body to address the Government. Some of the Judges, however, will probably hereafter submit minutes embodying their individual opinions.

W. J.—Reg. No. 5594C—327—19-8-84.

No. 613, dated Calcutta, the 26th July 1884.

From—C. B. GARRETT, Esq., Offg. Supdt. and Remembrancer of Legal Affairs,
To—The Secretary to the Government of Bengal, Revenue Department.

REFERRING to your Circular letter No 5T—R, dated Darjeeling, 28th May 1884, and its enclosure, I have the honour to submit the following report. I propose to discuss the Bill as much as possible in the order of its own chapters and the paragraphs of your circular letter to Commissioners. I shall therefore reserve all I have to say regarding paragraph 2 of the letter under reply until I have done with paragraph 12 of that circular.

2. Regarding the question asked in paragraph 3 of the letter under reply, I can only say that I never heard of any such custom. A ryot who had held his land for some years, and paid his rent regularly, might think himself hardly dealt with if the zemindar ejected him; but I am not aware of any district in which the zemindar's right to do so, if he pleases, has been questioned.

3. In this connection, I may also discuss certain questions put by the Government of India in their letter No. 784, dated 5th May.

(1) As regards the first question, I have had no experience in irrigation districts since the system was introduced, and am unable to say anything.

(2) I think the zemindars have some ground of complaint in respect of these dependent talooks; the remedy, however, which I should propose, would be rather to bring them on the Government registers and make the rents payable direct to Government. It would certainly be more safe for the dependent talookdars, and would not, I should think, impose any great burden on the State.

(3) I do not see any necessity for introducing this change: the burden, if somewhat anomalous, is not, I think, a very heavy one, and the zemindars can very well sustain it.

(4) I shall discuss this point later on.

(5) I have no practical acquaintance with any other tenures than the one named.

(6) I think in respect of all such tenures there should be a saving of local custom, and when such tenures are at present freely transferable, they should still continue to be so, and should not be tampered by any condition about pre-emption.

(7) I think it probable that the price-lists of the last 12 years might be much improved, and I think they might fairly be made a *basis* of the system of enhancement, but *not* the first term of a sum in proportion. I shall discuss this point more at length hereafter.

4. Coming now to the chapters of the Bill.

CHAPTER II.

5. This chapter deals exclusively with definitions and some preliminary matters, and calls for no remarks.

CHAPTER III.

6. *Section* 5 (1).—I do not feel altogether satisfied with the definition of "tenure-holders," It appears to me not strictly correct to say that a tenure-holder is a man who has acquired only primarily the right to collect rents. He has acquired undoubtedly a right to the land itself subject to the right of the cultivator. It is true, no doubt, that his primary object is to enjoy that right by the perception of rent rather than by tillage, yet in many cases the tenure-holder must contemplate the possibility of his having to cultivate the land himself; *e.g.*, if he is forced to eject a ryot and cannot immediately re-let the land, or where much of the area of the tenure is waste or unreclaimed. I would therefore suggest this definition: A tenure-holder means a person who has acquired land by grant or purchase, primarily with the object of sub-letting it to others, and includes, &c.

(2.) *Ryot.*—I am not quite clear that the term ryot sufficiently includes persons holding under lakhrajdars.

7. Lakhraj tenures are of two classes: some large enough to resemble tenures, some merely small pieces of land granted to Brahmans, and so on, which are more akin to jotes. In the former class, the tenants of the lakhrajdar ought, I think, to have the position of ryots. In the latter class, which are usually let in bhag jotes, it would be an extreme hardship to the lakhrajdar to give the cultivator any position higher than that of a korfa. If it were thought necessary, a section might perhaps be introduced making the tenants of lakhrajdars having holding in excess on arbitrary limit (say 50 bighas) ryots, and below that korfas. I doubt, however whether, the question is of sufficient importance to require legislation.

Clause 5.—I very much doubt whether this is quite a fair presumption to make. There must be many cases in which persons who are occupying holdings of more than 100 bighas took them originally as "jotes" (their intention being to cultivate partly by

themselves and their relatives, and partly by bhag jotedars) and not as tenures; especially this would be the case when the "jotes" were originally taken of jungle or waste lands. I do not see the necessity of making any presumption in the matter: the real test of whether such tenancies are ryotti holdings or tenures is (1st) the object with which they were originally acquired, (2nd) local custom. I would not raise any legal presumption at all. I would also re-arrange the section so as to make the nature of the right precede (clause *e*) local custom (clause *a*). The first thing to be looked at is the object with which the holding was taken: the second, whether local custom supervenes and attributes to any particular class of holding a particular character, irrespective of the object with which it was taken.

8. I proceed now to consider the very important question raised by section 37. That section proposes to enact that, if the position of his holding, sub-let by an occupancy ryot, exceeds "more than" half his holding, he shall on certain conditions be deemed to have become a tenure-holder.

9. Now the avowed object of this section is to discourage land-jobbers from buying up occupancy rights "by bringing from above and from below influences to bear on the speculative purchaser, which would depreciate the value of the occupancy holding in his eyes, and thus deter him from seeking such an investment for his money."

10. Now I must remark that in the first place, on the one hand, the ryot's right of occupancy is made freely saleable; on the other, in order to prevent his selling it freely, to prevent his disposing of it to the class of persons who will give him the best price for it, a section is framed to deter that very class from purchasing. This certainly amounts to confessing no small doubt as to whether the free saleability of occupancy rights is so very good a thing after all.

11. Then again, no doubt, such a restriction will greatly depreciate the value of the occupany rights. If a purchaser knows that he must either cultivate himself (which may be impossible), or that the occupancy right which he has purchased will in the course of 12 years be swallowed up by an adverse occupancy right which his tenant will have acquired against him, the occupancy right will undoubtedly become much less valuable. Thus, again, the free saleability of the occupancy right will be eaten away by making it less valuable. This, then, is the first objection I have to the scheme. It is giving something with one hand, and taking part of it back again with the other.

12. My next objection is that that section will be extremely difficult to work, and if worked, would be much less effective than is anticipated. To discuss the latter point first.

13 This ground of objection may be sub-divided: (1st) the checks themselves are much less effective than they appear to be; (2nd) they are largely compensated for.

14 It is hoped (1st) that the check will operate by a pressure from below, the ryot will be acquiring rights against the land-jobbers; (2nd) by a pressure from above, the landlord being empowered to compel the land-jobber to pay his rent to the day, while the latter can only recover from his ryots by process much less prompt.

15. As regards the first of these pressures, I would beg to point out that it appears to me that by the effect of section 58 any person can prevent a non-occupancy ryot from ever acquiring a right of occupancy. Every non-occupancy ryot can, under section 26, acquire a right of occupancy only by 12 years' continuous occupation.

16. But under section 58 a landlord admitting a ryot may demise the land to him, say for a term of 7 years, with a right of re-entry at the end of the term. Now, supposing the landlord demises to a ryot for a term, to end on the last day of Cheyt, re-enters on that day and re-demises to the ryot from the 1st day of Ashar following, the continuity of the ryot's holding has been effectually broken, but the cultivator of the land has never been hindered, nor has it remained unproductive for an hour; and it seems to me that a ryot, if he held under such leases for 100 years, would never acquire a right of occupancy. Thus the land-jobber may sub-let his land, and yet wholly evade the check. It will, however, be probably argued that conceding this to be possible in theory, yet that the laziness and *laisez aller* of the natives is so great that they will never take the trouble to do this.

17. I doubt this myself: the land-jobbers will be principally small mahajans, beniahs, local shop-keepers, who have made money, and want to invest it in the best way. It may be expected that these people will manage their holdings in a very different way, and with a far keener eye to profits, than the Rajah who has inherited, or the successful merchant who has purchased a large estate.

18. If, however, I am not wrong in my view of the effect of section 58, I think there is no doubt that the land-jobbers will soon find out how easily they may prevent freshly admitted ryots from acquiring rights of occupancy, and that they are not a class of people who, for want of a little care and trouble, are likely to allow them to acquire such valuable rights. It seems to me therefore that the pressure from below will to a great extent fail.

19. Then there is the pressure from above. No doubt the landlord will have it in his power to deal with these land-jobbers, if they are in arrear with their rents, more summarily than they can in turn deal with their under-tenants; but we must recollect, on the other hand, that the class against whom we are legislating are people of a life-long experience in realizing small dues from poverty-stricken debtors, and that they will be also people having some small amount of capital, who will be able to satisfy the zemindar's demand, and who will certainly somehow or other sweat the interests out of their under-tenants. All these things therefore being considered, I am inclined to believe that the

pressure from above and from below will be much less in reality than is anticipated. Then we must remember that, if an occupancy ryot loses something by being converted into a tenure-holder, he also gains large compensation. He gets rid of the liability of distraint: he can sell his tenure anywhere without the zemindar being able to claim any right of pre-emption: and if he only avails himself of his power of preventing his ryot from acquiring a right of occupancy, he may, as far as one can see, be in a much better position than if he had not sub-let. In the last place, I would point out the great difficulties which then will lie in the way of ascertaining when, and proving clearly that, an occupancy ryot has really sub-let. Who is to give the information? not the occupancy ryot (unless indeed he wants to become a tenure-holder), not the sub-lessee, who will stand in fear of his immediate lessee, and not the landlord, who will never, I believe, desire to convert the occupancy ryot into a tenure-holder. And even supposing the information given, the proof of sub-letting would always lead to trouble, to litigation, and to vexatious enquiries. It would, moreover, I think, not be very difficult for an occupancy ryot so to settle his land, that while it answered for him all the purposes of a lease, yet should be in its legal effect only an agricultural partnership, in which, as in many other partnerships, the senior partner should retain the lion's share of the profits. Taking therefore all the points into consideration, I believe it will be found that the proposed scheme will be found extremely difficult to work, and even if it can be managed to be worked, I believe it would not produce the results anticipated.

20. The question then may fairly be asked, if you believe the check as suggested in section 37 would not work, what remedy would you suggest to prevent occupancy holdings generally passing into the hands of land-jobbers which the experience of the world has shown to be the hardest and the most unjust class of landlords? To which I would answer—Do not make the right of occupancy freely transferable.

21. I am not insensible in any dergree to the golden dream of a peasant proprietary, could I see it possible in any way to prevent sub-letting, or even to restrain it within any reasonable bounds. Could I suggest any measures by which only the cultivating class would buy up occupancy rights, I, for one, should be glad to see that occupancy right made freely transferable. But I do not believe this would be the case. I do not believe that, when an occupancy right was offered for sale, its purchaser would be the thrifty korfa who had saved a little money, and whose desire in life was to hold a few bighas of land on a stable tenure; nor the petty occupancy holder, seizing the chance of adding the lands of a less fortunate brother to his ancestral holding; but I believe the purchaser would usually be the land-jobber, who would simply re-let his former holding to the old ryot on land-jobber's terms. Holding this view (which in opposition to very high authority I maintain with diffidence), I believe it to be a most unwise and dangerous policy to make occupancy rights freely saleable. I do not believe it will be any real benefit to the ryots; it will enable him to discount the future happiness and comfort of his descendants, giving to the servants for life power to forestall the rights of all the remainder men. I fully believe that within an appreciable time the greater part of the occupancy rights will have been sold by the improvident ryots, and they will then either be terminable leaseholders, subject to ejectment and enhancement every six or seven years, or non-occupancy ryots slowly regaining an occupancy right, perhaps only to squander it again as soon as gained. The non-transferable, heritable occupancy right is a sort of entailable estate to a ryot It gives them land to cultivate, a house to dwell in, and (in spite of Mr. Reynolds' high authority) all these, I believe, on more favourable terms than they could be obtained by a new ryot; and I cannot too much deprecate the policy that would make it possible for a single improvident ryot to squander this hoard, and thus materially impoverish his family for many years.

22. There are, however, three cases in which, I think, an occupancy right ought to be transferable—

1st—With the consent of the landlord.

2nd.—In execution of a decree for rent by the landlord.

3rd.—If an occupancy ryot wishes to leave the village or abandon agriculture altogether.

23 The first of these cases is plain. In the second case, I would make it saleable only in satisfaction of arrears when they amount to a full year's rent, and whatever the occupancy right fetched, I would make it a full satisfaction of the decree, giving the landlord a power to exercise a sort of elegit, if the amount offered for the occupancy right did not exceed the amount of the decree, to take it in lieu of proceeding with the sale. I would also allow a landlord to pre-empt (subject to the above condition) at the best price bid. As regards the third case, if an occupancy ryot wanted wholly to abandon a village, or to give up agriculture, I think the zemindar should be compelled to buy him at a fixed price, or permit him to sell his occupancy right to the best advantage. I think it would be possible to assess an occupancy right at so many years' rental The rate, however, would of course vary very much in different parts of the country. When a ryot under such circumstances sold his occupancy right, it should extinguish at once and for ever his status as a settled ryot of that village. I believe that these are the only two cases in which an occupancy right ought to be saleable; in both these cases it is very much to the advantage of the ryot that it should be saleable, but to make it saleable in any other case is, I believe, conferring on the ryot not a blessing, but an injury.

CHPATER III.

24. I find little to comment on in this chapter.

25. I have already expressed my opinion that the presumption in section 5, clause 5, is not a sound one.

26. *Section* 6 (*b*) *and its clause* 2—As they stand seem to me to make it possible for a tenure-holder to get his rent reduced when a part of his tenure diluviated, and impossible for the landlord to get it restored to its old rent when the land is thrown up again. Suppose a tenure-holder asks for and obtains an abatement of half his jumma, on the ground that one-half of his holding has diluviated That according to clause 2 is no "reduction," and his land remains "unreduced" from the time of the Permanent Settlement. But suppose this land alluviates again, the landlord ought to be able to enhance the rent again to its old amount. It seems to me, if I read this section aright, that he might in such a case be met by the answer that there had been no reduction of their rents, and therefore there could be no increase.

27. *Section* 7.—In his dissent, the Hon'ble Kristo Das Pal says that the idea of any deduction on account of "risks of collection" is introducing a novelty. I do not think so. Perhaps *eo nomin* it has not been customary to allow anything for risks of collection, but in allowing costs of collection at 10 per cent. a much larger sum was allowed than the bare cost of collection amounted to, and this balance must have been intended to cover the risk of collection. I am not at all, however, sure that it would not be convenient to lump the tenure-holder's profits and costs together, enacting that the court should not allow him less than a margin of 25 per cent. of the gross rents to cover all his profits and outgoings. Where a zemindar and a tenure-holder are on bad terms, the ascertainment of the *costs* and *risks* might give an opportunity for considerable litigation.

28. *Sections* 8 *and* 10.—I do not think that the limit of enhancement in the case of tenure-holders is unfair; nor was I inclined formerly to think that there was any necessity that the same precaution should be taken in the case of enhancements of tenure-holders out of court that obtain in the analogous case of occupancy holders. There are, however, many small holdings in Eastern Bengal which, by the custom of the country, are considered to be tenures, and in respect of the enhancements of which this precaution is probably necessary. I think therefore all tenures should be made enhancible out of court only by a registered deed. I think that, after a tenure has been enhanced, no further enhancement should be allowed for 15 years.

29. *Section* 11.—As this section stands at present, it seems to me that a permanent tenure might be bequeathed in divided shares; *e.g.*, suppose a tenure of three villages, the holder might bequeath the village A to X, B to Y, and so on. Is this a correct view of the law, and if so, is it fair on the landlord that he should be compelled to submit to a partition of that which he demised as a single holding? I may make a similar remark as to section 31, clause (*f*).

30. *Section* 15.—Clause 3 seems to me likely to lead to much litigation. Such disputes will arise only where there is a good deal of ill-feeling existing between the landlord and tenant, when in such a case it will be easy for the tenure-holder to deny, and difficult for the landlord to prove, that such a written refusal was given. I would therefore give an option of serving the written refusal through the Collector on payment of a proper fee.

CHAPTER IV.

31. I think the time has come when the 20 years' presumption rule requires some amendment, as I am convinced it is yearly becoming more divergent from the actual state of facts. In 1859 it was perhaps a fair presumption. Zemindari affairs were then very loosely managed. Enhancements were less common, because irregular contributions of all sorts could be more safely levied, and on the whole it was not then unreasonable to presume that if a ryot could prove that he had paid rent at an uniform rate for 20 years, that he had held land at that rate from the date of the Permanent Settlement. It was moreover far more difficult for a ryot to prove an uniform holding of 20 years than it is at the present time. It is, however, a very difficult thing to say that a person who in 1884 can prove that he has held at an uniform rate since 1864, should be entitled to have it presumed that he had held at that rate since the time of the Permanent Settlement. I think myself that it would be no more than strict justice to the zemindars to sweep away the presumption altogether; but I am content to accept the reasons for its partial retention. I would propose that the presumption should cease to run from the 2nd March 1883, or, still better, to allow it to expire as suggested in section 64.

CHAPTER V.

32. The first point I wish to draw attention to in this chapter is what appears to me an ambiguity arising from the collocation of sections 25 and 26.

33. As I understand the words "settled ryot," it is a person coming within the description of section 26, and none other; but section 25 does not, however, refer in any way to section 26. I think therefore it might be possible to argue that by section 25 any one whose status could be brought within the meaning of the word *a settled ryot* would be entitled to all the benefits of that section. It might be argued that section 26 specified only one particular class of such settled ryots. This it is clear was not the intention of the Legislature, and I think therefore that in section 25, after the words "every settled ryot" should be added "as defined in section 26."

34. *Section* 27.—I do not understand why a ryot who has acquired a right of occupancy by holding lands in one village of an *estate* should thereby acquire the status of a settled ryot in every village of that estate. I do not understand the principle on which it is thought right that such a status should be acquired.

If this clause was simply added to meet the difficulty of a ryot being changed from one village to another, I think that might be met by adding at end of section 36, clause 3, "situate, provided the land was situate in the same village or any village in the same estate.

35. Such a rule would press extremely heavily on those zemindars who have estates consisting of many villages bearing a single towji number.

36. Moreover if the word "estate" in the case of estates partitioned since 1855, or indeed since a much later date, were defined to include the whole estate as it stood before partition, the landlord's position would become peculiarly difficult. It cannot be assumed that a zemindar (whose estate has been subject to partition even 10 or 15 years ago) is aware what has become of all the persons who were ryots of the estate at the time of partition, or what are the names of their descendants, or what persons are settled ryots of the estates in which he no longer retains an interest. A landlord therefore admitting a new tenant, possibly a person wholly unknown to him, may find that he had admitted a settled ryot of an estate which originally was united with his own, and therefore a person who, by the force of this section, can claim also the status of a settled ryot of his own estate. It does not appear to me necessary to go beyond the village as the envelope of the ryot's rights; every settled ryot should, however, be a settled ryot of every village in which he holds lands in occupancy right, the word village being defined as in this section .

37. *Section* 28.—I think that this section goes too far. I perfectly agree that it is undesirable that a landlord acquiring an occupancy right should be able to keep it alive, so that, when he re-let the holding, he should be able to let it in the capacity of a *ryot*, and not a *landlord*, making his lessees thereby korfas, incapable of acquiring a right of occupancy. But there might be many cases in which the landlord might wish for other reasons to maintain the right: *e. g.*, he might think it more to his benefit to re-assign the occupancy right which he can no longer grant than to merge it. I think therefore that whether an occupancy right had merged or not should be left to be a matter of evidence, subject to this proviso, that any landlord re-letting such land should do so as a landlord and not as a ryot.

38. *Section* 29.—I think this section is also open to much objection. In coparcenary estates nothing is more frequent than for the stronger co-sharers to seize possession of holdings vacant by the death or disappearance of the ryots, and hold them to the exclusion of the coparceners; by the effect of this section such persons would now be able to acquire a right of occupancy in such land. I entirely, however, agree with the suggestion made in your letter that an occupancy ryot, acquiring a proprietary interest in an estate, should not thereby forfeit his occupancy right. This is but a correlative of section 28 as I propose to amend it. But in this case, as the *ryotti* was the *original right*, I do not think it would be fair to add the proviso which I have suggested as to the landlord's position on re-letting.

39. Coming now to the incidents of the occupancy rights, and having so fully discussed before the question of transferability, I shall make no remarks on "*f*" beyond this, that I do not think the power of bequeathing an occupancy right ought to go beyond bequeathing it to some persons in the line of succession, and perhaps also to some persons who would have been in the line of succession if she had not been a Hindu female; otherwise the power of bequeathing infringes on the principle of non-transferability. I would also here again ask, does this section mean that a ryot can bequeath his holding in divided shares, and is the landlord bound to recognize such a division of the holding? I do not think, however, there is any reason why a ryot should not grant his occupancy tenure to any person during life to whom he might have devised it by will.

40. I think an occupancy ryot ought to be allowed to make improvements, and, as was said before, I do not see any possibility of preventing his sub-letting.

41. (*g*). Indeed, I am not sure it would be advisable to do so. Sub-letting is not without its advantages If an occupancy ryot falls into difficulty through bad crops, loss of cattle, sickness, &c, the power of sub-letting enables him temporarily to get rid of part of his land at a profit. The members of his family thus thrown out of work can go to Calcutta or elsewhere and earn some ready money, and after some years of struggle, the family can meet again, resume the old jote, and then form status. It also to some extent compensates the ryot for the non-transferability of his holding, and it enables him by sub-letting to a person who can perhaps work the land at better profit to raise money for some temporary need. The korfa ryots, however, certainly need some protection.

42. *Sections* 32-36.—These sections are occupied with various restrictions in the transfer of occupancy rights. I shall discuss them less, because, if the free transfer of occupancy rights be given up, these sections will be swept away with it.

43. As they stand, I cannot but think that they will lead to much litigation, that they will make the *bonâ fide* sales of holdings more difficult They will also press hardly on the zemindar, because, after he has succeeded in establishing a fair price, all his trouble and expense may be rendered futile by the ryots refusing to sell

44. On the whole, if it is determined to concede the free transfer of occupancy rights, it would, I believe, be better for both parties that such transfers should be free from all restrictions rather than to subject it to restrictions which will, I think, prove only fresh inducements to litigation.

45. *Section* 37.—I have already discussed this section sufficiently.

46. *Section* 38—I do not see any necessity for imposing such a limit. I think, on the whole, it is objectionable as disenabling ryots giving long leases, which are generally considered advantageous.

47. In section 39 we begin the difficult subject of enhancements. On the whole I approve of this part of the Bill.

Sections 39 *to* 42.—Call for no special notice.

48. In section 43 are enumerated the difficult grounds of enhancements.

49. The first of them is when the rate of rent paid by the ryot is below the prevailing rate payable by occupancy ryots for land of a similar description, and with similar advantages in the vicinity.

50. In the first place, I must point out a difference between the language of this section and the language of the present law, *i.e.* the substitution of the words "occupancy ryots" for "ryots of the same class." It may be bad law, but I never could see myself the equity in considering an occupancy ryot, who had just submitted to enhancement, a ryot of the same class as one who had steadily resented the zemindar's attempt to enhance.

51. But, however this may be, I believe that this ground of enhancement has done its work, and should be left to expire now in justice to the ryots, as the 20 years' presumption should be in justice to the landlord.

52. When Act X of 1859 was enacted, it was, I believe, the case that lands were let at very varying rates, and that much land was held below the prevailing or customary rate. It was a good intelligible rule to enact that all such lands might be enhanced up to the pergunnah rates, or at the general prevailing rate. But I believe that the process has been effected throughout Bengal, and I believe there is no land that is now held below the customary rates prevailing in 1859. But the rule is now being worked in quite another way, and in a manner in which I am convinced it was never intended to be worked. A zemindar who wishes to enhance under this section—I am stating a case now within my own experience—goes into a village, some of the largest ryots perhaps are bought over, some of the weakest are frightened, and some of the most unthinking persuaded, into consenting to an enhancement, and then by means of these ryots (added very often to some collusive and fictitious ones) a prevailing rate is established, and ultimately it often happens that all the ryots in the village have to submit to enhancement. This is perhaps done again in two or three villages, and these become the means of fixing a prevailing rate for the surrounding villages. Thus the rights of all ryots are by this rule placed at the mercy of the feeblest, the stupidest, and the most venal of the class.

53. I believe therefore that the original object of this section has been fully attained, and that it is now simply used as a leverage to force up rents unfairly, and on no sound and intelligible principle; and I believe that, under the provisions of this law, it is likely to be still more utilized for this purpose.

54. I think therefore that this ground of enhancement should be wholly expunged, and I cannot see that the zemindars should have any right to complain, inasmuch as they are simply deprived of a ground of seeking enhancement which they are patently misusing. Or if it were thought too much to do this, I would continue it for five years longer, so that zemindars might have the opportunity of raising all their ryots' rents once to the present prevailing rate, and this ground of enhancement should then expire by effluxion of time.

55. The other grounds of enhancement seem to me plan and quite unobjectionable.

56. *Clause* (*c*).—I must deprecate the introduction of this section: it is giving a legal consistency to what was, I believe, never more than a custom with some old-fashioned zemindars: it is, as it were, a bowing ourselves in the house of the miserable idol which for the last 100 years we have always denounced.

57. *Section* 45.—I think it quite right that in fixing the amount of enhancement to be demanded on account of a rise in the prices, the court should refer to the published price-lists, and be at liberty to compare the average of prices of one quinquenium with those of another. I do not think, however, that any hard-and-fast rule should be laid down as in rule "*c*." A Judge having considered these price-lists should be at liberty to guide himself by them, and any good Judge would do so. But I disapprove of a Judge being compelled merely to work out a sum in proportion: he should assess a fair rate on all the evidence before him.

58. *Section* 46.—I think a limit should be imposed on the extent to which rent might be raised for landlords' improvements: it should not be, say, more than three-fourths of the value of the proved increased production caused by the improvement. I feel some doubt about section 4. If there has been an appreciable increase in the productive power of the land, it must surely be able to bear an increase of rent.

59. As regards the measure of the increase, the limit fixed by the Bill is not unfair. I see no reason why the landlord should not be permitted to enhance by private contract to the same extent that he is allowed to enhance by a judicial decree. I think the registration sections, coupled with the limitation, are sufficient protection to the ryots. It seems desirable to favour, as much as possible, adjustments of enhancement made out of court.

60. *Section* 48—Is I think very objectionable. It gives a great discretionary power to courts, which are by no means all fit to exercise it. It does not point out on what principles the discretion is to be exercised. It tends to develop in the greatest degree individual idiosyncracies, and considering the number of courts which will have a share in carrying out the provisions of this Bill, I expect this section will lead to much diversity of practice,

and possibly to not a little injustice. Having laid down very carefully the method and the extent of enhancement, I think we ought then to stop, and not give the court a wide indefinite discretion, which there is, I fear, much danger of their using indiscreetly.

61. I quite approve the 15 years, limit imposed by section 50. It is hard, I think, that a suit dismissed on the merits should bar enhanced rent for 15 years. I would reduce it to seven. A suit is sometimes dismissed on the merits for other reasons than because it is wrong

62. *Section* 51. *Reduction of rent.*—I agree that the courts, in construing this section, would probably feel themselves at liberty to decree reduction only on the ground of some calamity of the same nature as the deposit of sand, though I am not sure they would be right in thus construing the section. I conceive the meaning of "like calamity" to be a calamity permanently affecting the land. The section will be clearer perhaps by omitting the word "like."

63. Passing now to the question of bastu lands, I may begin by saying that I am not aware of any custom whereby the tenant, after abandoning his cultivation, could retain his bastu lands, and considering how limited the bastu lands is in many villages, such a custom would, I think, be a very unreasonable one.

64 Then as to the question of the terms on which bastu lands are held, and how far these terms, if different, should be assimilated to the conditions which regulate the tenure of ordinary arable lands, it is extremely difficult to give a general opinion, as the terms on which bastu lands are held are so different in different parts of the country; in Behar, for instance, the ryot generally gets his homestead free, while in Bengal, as a rule, bastu and udbastu lands are the most highly rented lands in the village.

65. In Bengal, too, I can confirm, from my own experience, the statement in your letter that excessive enhancements of bastu holdings have been made the leverage to force up the rents of culturable lands.

66. It is, however, extremely difficult to say what should be the conditions for holdings and enhancing bastu lands.

67. All I can suggest is that any cultivating ryot should have in his homestead land a title as good as the best title he has in any part of his culturable lands: that the rent payable on his homestead should be enhanceable only when the culturable lands of his holding were enhanced on one or more of the grounds mentioned in section 64 (*a*), (*b*), (*c*); in each case the rent should be in the same proportion. When arable land rises, I think homestead land does so also; but bastu lands should be enhanceable on the ground of landlord's improvements only, when the improvement was shown to be substantially beneficial to the bastu as distinct from the arable lands.

3*rd.*—I would permit the tenant to plant trees, sink wells, and build a permanent dwelling *after* he had acquired a right of occupancy, but not before, save with the written consent of his landlord. These improvements should not be of course available as a ground of enhancement; and on the tenant quitting the land, he should be allowed to remove anything he could, subject to the condition of replacing his homestead in the same condition in which he got it. In all other points I would let the letting be regulated by custom as provided in section 214. The difficulty in the partition of basgitt lands arises, as far as my experience goes, not so much from the value of the land as from the difficulty (consistently with his rateable share) of assigning to each proprietor his own homestead, including therewith the homesteads of his naffars and ghulams.

2*nd.*—Not giving him too large a proportion of Brahman, Rajput and Chettry tenants, from whom no services can be exacted, and giving him a due proportion of lower castes, such as Telis, Kumars, Dosadhs, Doms and the like, from whom valuable service may, as occasion requires, be extorted.

68. *Section* 52.—I think that, on the whole, there ought to be no great difficulty in preparing for the future accurate price-lists. Considering the importance which will in future attach to such price-lists, I think the computing of these should be made the special, or at any rate the primary, duty of one officer. There seem to me to be three causes, each of which contributes somewhat at present to render such lists accurate—

(1). The officer charged with the preparation of the lists has not had leisure enough to devote to the obscure, but most important, duty of thoroughly making himself master of sifting and comparing the return sent.

(2). The police collect the returns unintelligently, not taking care, I suspect, to distinguish between the prices at which grain is selling in petty bazars and the prices at which it sells in large marts

(3). The grain-dealers themselves are often unwilling to give the information required correctly.

69. All these difficulties, however, are, I think, very superable with proper care and due trouble. I think also that it is possible to improve the accuracy of the old lists, though this will no doubt require a good deal of trouble. They might be checked from unofficial sources and thus rendered tolerably correct. I believe that in many cases the large country dealers could easily supply the rates of grain for the last 15 or 20 years, if they chose to do so.

70. The "dewri" accounts of large zemindars would also help very much.

71. I deprecate, however, very much any conclusive effect being given to price-lists. They would always have very great weight, as they would probably be much more satisfactory

than any evidence that would be brought against them, and practically, I believe, most enhancement cases would be decided on the basis of them; but it is always dangerous to make any evidence conclusive, thereby shutting out all possibility of exposing even a palpable mistake.

72. I would equally deprecate any idea that the enhancement of the rent is to bear an exact proportion to increase the prices. In the first place, I deprecate the idea of reducing a Judge to a mere cyphering machine, and leaving him no scope for the display of any intelligence. In the second place, there are always at least two causes which will operate to make the rates as ruling at the grain markets higher than the rates which the ryot obtains at the threshing-floor—

(1.) The cost of carriage.

(2.) The fact that the ryot must sell some portion of his crop at once, and that the grain-dealers can hold back.

73. Possibly something ought to be allowed for the increased costs of cultivation, though I do not think the cost of cultivation has yet increased very appreciably. The fall in the value of silver, however, has perhaps had some influence in that direction. Subject, however, to this limitation, I think that these price-lists might be safely relied upon, and that, if taken over a sufficiently large area, and for a sufficient number of years, they would with reasonable accuracy show the permanent rise or fall of prices. In order to eliminate, as far as possible, error arising from prices having been abnormally appreciated in any particular tract by strictly local causes, such price-lists should always show the rainfall of each month in each district, whether the year was generally a year of good or bad harvests, with a note of any special circumstances, such as local floods, likely to have affected abnormally the prices in that particular tract. With these facts to guide one, it would be easy to see that an abnormal price prevailing in one district, in which it was noted that some calamity had occurred, must be, as far as might be, eliminated, before the average was struck; and I believe that, if such price-lists showed there had been an average rise of prices over a whole tract for a sufficient length of time, you might accept that as proof that there had been really a permanent rise in prices, and that you might fairly enhance the ryots' rents in something about the same proportion.

In practice, however, I doubt whether such local calamities would affect prices much.

74. I think, therefore, if these price-lists were carefully prepared and intelligently used, they would afford the greatest assistance to the courts in dealing with enhancement, though I entirely deprecate their being treated as a conclusive sliding scale for ascertaining the rate of rent.

75. I now come to the section which deals with the commutation of rents (section 53), and on the whole I see nothing to object to in it. I think that the ryot ought to have the power to convert his corn rent into a cash rent. With bad landlords it may be his only method of shielding himself from infinite petty oppressions; and I think the rules for the conversion are fair. Any court having before it (1) the average money rent payable by similar ryots, and (2) the money value of corn rents for the last five or ten years, can with attention fix a fairly equitable rent.

76. The money rent is almost always certain to be lower than the corn rent, and this difference would represent partly an allowance for the risks of cultivation, partly that, year by year, mechanical enhancement which takes place in a corn rent when prices are rising.

77. As regards clause 6 of this section, I can only say that, as I see no reason why such an application should be refused, except on the score of the trouble it would give to the court, I would give no court the power to refuse it arbitrarily

78. I come now to deal with chapter VI, which deals only with non-occupancy ryots.

79. By this chapter no limit is imposed on the rent which the landlord may demand from his tenant before he lets him into possession: that is to say, there is perfect freedom of contract at competitive rates between the parties. I am perfectly ready to concede that in principle this is the right way of settling rents; and that that is the best system of land-holding, when the landlord exacts from the ryot all he can afford to give, and the ryot is willing to give no more than he can consistently with allowing himself a fair profit. But in how many countries is this possible? Is it possible in India, or has it any chance of becoming so within any period which one can foresee? In India, the landlord still exercises authority over his tenants, and is called a benefactor, and for the commodity he has to offer, he gets a better price than any other provides. One must also recollect how much the weakness of the ryot's moral character exposes him to be worked on by the zemindars. If the day of reckoning is far off, he trusts that it may never come, and he will take land on terms which he knows cannot yield him a profit, if only it promise a present means of support, and he will trust when the rent falls due to evade or beg it off.

80. Is it possible for the State to allow free contract between persons so unevenly matched? Ought not the State to intervene in the bargain, and compel the stronger to act fairly by the weaker?

81. Moreover, I do not see how it can be said to be fair that a settled ryot, if he takes a new holding, should be liable only to pay an enhancement of 25 per cent., while a non-occupancy ryot might be able to get it only at an advance of 50 or even 100 per cent.

82. *Ex concessis*, an occupancy ryot is not entitled; by reason of having gained that right, to hold his land at more favourable rates than a non-occupancy one; and if it be unfair that an occupancy ryot should pay an enhancement of more than 25 per cent., how can it be logically said that it is just that a non-occupancy ryot should be liable to pay as much more as the landlord can exact.

83. Moreover in thus regulating by law the rent which may be demanded from a non-occupancy ryot, I believe we are not doing anything contrary to the old-established customs of landholding in Bengal. I believe custom always regulated rent to a much greater extent than competition, and that the idea that a landlord might exact from a new-comer just as much as he pleased, is an idea foreign to the land system of Bengal.

84. I would therefore entirely deprecate the principle of allowing the landlord to exact from the non-occupancy ryot as much rent as he can get him to agree to, and I would advocate that non-occupancy ryots should in this respect be placed on the same footing as an occupancy one.

85. *Section* 58.—I would again point out (unless I have completely misapprehended the effect of the section) that by the force of it a landlord might, without in any way interfering with the course of cultivation, prevent a ryot acquiring an occupancy right by an occupation of a century. Such a section seems to me contrary to the spirit of the Bill, though for my own part I view the acquisition of occupancy rights with little favour.

CHAPTER VII.

86. This chapter deals with the most miserable class of ryots—the korfas. I think the ryot's power of enhancing the rents of his under-ryots ought to be limited, and the limitation proposed seems fair. I do not see why a ryot, not holding under a lease, should not be able to enhance his ryot's rent to the same extent that one holding under a lease can do unless it is to encourage people to take leases.

CHAPTER VIII.

87. I have already given my opinion fully as to the 20 years' presumption rate, and I have nothing further to add about it. The rule provided in section 64, clause 2, would perhaps be the fairest and best way of getting rid of this objectionable presumption.

88. As regards clause 3, I would only remark that a ryot, who has all along paid a fixed share of his crop, has in fact been submitting to a self-acting enhancement as the price of grain has risen. It is impossible to say that a ryot, who has been paying what was the money equivalent of a moiety of the crop half a century ago, has been paying the same rent as a ryot who has been paying during that period what has yearly been estimated as the equivalent of half the crop at market prices.

89. *Section* 66.—I doubt if it would not have been better not to relax the hard-and-fast rule: it approximates very nearly fair and is calculated to check litigation.

90. *Section* 67.—I am inclined to think that it would be better that Government should in all cases fix the dates on which instalments are to be paid, both in the case of under-tenures, and ryots' holdings. It is a very common device for landlords to harass their ryots by demanding kists every month, or at unreasonable times. In fixing such kists, regard should be had to the local custom and the prevailing crop, and existing written contracts should be saved. But after instalment dates had been once fixed, no custom should be pleaded against them, either as regards past or future oral contracts, and these dates of payment should be taken as inserted in every future written contract.

Section 68.—Proviso. I question its being possible in practice even to arrange for this.

91. *Section* 70.—This section will be of immense value to the ryots, considering the importance which it is to the ryot to get proper receipt, and the unwillingness of zemindari amlah, from laziness or worse motives, to give them. I am sorry that the stringency of the original section has been relaxed.

92. *Section* 71; *clause* 2.—Why should the tenant have to pay a fee for a statement which the zemindar, if he disputes the ryot's calculation of the mutual account, ought in common fairness to give him?

Section 73, *clause* (*b*).—This clause is one which I fear may be much abused if left as it stands at present. It will be impossible for any one to say whether a ryot *bonâ fide* believes that his rent will, or will not, be received. I would limit the privilege to cases where the ryot had in a former case tendered the money, and it had been refused, and he had deposited it in court. This would make it necessary for a ryot at least once to tender rents, and it will be the zemindar's own look out if he refuses it. It will save the ryot the necessity of making repeated tenders in cases in which he is sure the money would not be accepted, and it will bring the case within the ordinary law of tenders.

Clause (*d*).—Is another clause which I fear might be abused in cases where disputes were going on as to the right to receive the rents. Ryots would be gained over to one side or the other, and the result would be a number of tentative applications of this sort.

93. In the first place a ryot is always safe in paying to the person to whom he has been all along paying rent, unless he has notice from competent authority that the title of the former has determined, or has been transferred to some one else. In the latter case he is safe in paying to the person to whom it is transferred. It does not seem to me therefore that the tenant can be ever in perplexity as to whom he can safely pay his rent, and I

deprecate anything that facilitates persons who are contesting the proprietary title drawing the ryots into the litigation on one side or the other. If, however, these sections are to be retained, I would suggest that the deposit should be in the civil court competent to entertain a claim in respect of the rent deposited. It would sometimes be an extremely difficult question to decide whether the ryot was entitled to refuse to pay his rent any longer to the person to whom he originally paid it; and such questions are more likely to be decided correctly by an officer who has had some judicial experience than by one who has had none.

94. *Section* 81, *clause* 2.—I somewhat doubt the policy of this clause. Most police officers, many sub-divisional officers, and not a few district officers, have very large notions about the preservation of the peace; and an officer with intermeddling tendencies might in such a case do much mischief, and force into a real quarrel some trivial dispute which the parties if left alone would certainly have settled amicably.

95. *Sections* 81-83.—On the whole, these sections seem pretty well adapted to carry out the ends aimed at. I fear, however, they labour under the disadvantage of being somewhat cumbrous and expensive. Section 83 embodies what I have always understood to be the law relating to the possession of the crop. The zemindar is always trying to assert a joint possessive right to the crop, so that, if the ryot attempts to remove it, he may invoke the sweet influences of the Penal Code; but I do not know that he has ever been allowed to establish such a claim. The definition is not quite exhaustive: it ought to declare the ryot's right to remove the bhoosa at once. The bhoosa is the ryot's own.

96. Both in sections 83 and 93, how are the assessors to be compelled to attend, and are they to be compensated for their loss of time. I cannot but fear that in the case of a small holding, the expenses would swallow up a large portion of the proceeds. However, perhaps the knowledge of this will make persons more inclined to settle such questions amicably.

CHAPTER IX.

97. I do not think that there is much prospect of this chapter being taken advantage of, at least not within the present generation. I see, however, nothing to object to generally in the provisions of this chapter.

98. *Section* 90.—I am disinclined to give a non-occupancy ryot any right of making improvements except with the landlord's consent, save perhaps the right of erecting a house (the materials of which he should have the right of removing if ejected) and digging a kutcha or pipe-well. If you give him the power of making improvements, it is very difficult to refuse him, if ejected, some sort of compensation for their unexhausted value, which would lead to all sorts of difficulties. Until, therefore, a man has attained the position of a settled ryot, I think it not unfair to say that he can make improvements only on such terms as he and his landlord can agree upon.

99. *Section* 95.—Can a ryot holding a permanent lease surrender his holding? I do not think that the question has ever been decided.

100 *Section* 95, *clause* 3, *paragraphs a, b, c.*—I do not see the necessity of raising these presumptions. In the first place, I do not think any of them rests on a particularly sound basis, and considering the fact that the ryot can still protect himself by having his notice served through the Collector, I see no advantage in going beyond the existing rule that, if the ryot wishes to make himself secure, he may do so by serving notice through the Collector.

101. *Section* 96.—There can be no doubt that a zemindar is now placed in a difficult position if an occupancy ryot abandons his holding without surrendering it to the zemindar; he must let it be fallow, and submit to the loss of his rent, or, if he lets it to a fresh ryot, it very often happens that the old ryot returns after several years and commences litigation to recover his holding. No doubt landlords sometimes forcibly eject ryots. Indeed I recollect a very notable instance, in which an estate having been partitioned, each and all of the several co-sharers set to work and ejected every ryot who had his house in the share of any other co-sharer.

102. Still I do not see how the present section facilitates such forcible ejectments, while it is fair to the landlord, as relieving him from a difficult position. It does not increase his power over his ryots in any way. It does not make it more difficult for the ejected ryot to seek redress, and if the ryot is so apathetic, or values his holding so little that he will not avail himself of the very easy means the law gives him of recovering possession, I do not quite see how you are to help him. Indeed I think that clause 3 of the section is somewhat unduly favourable to the ryot. If a ryot abandoned his holding really of his own free will, I would not allow him to recover it without compensating the zemindar for any ascertained loss he had sustained, as well as the new lessees. I may add that the power of selling the occupancy right of the deserter does not appear to me to provide adequate security. The value of an occupancy right is very variable and in some districts is worth little.

103. *Sections* 99-101.—I am not disposed to extend the landlord's power of measurement to lakhraj holdings. It will simply be used for harassing the lakhrajdars. As regards the standard of measurement, I agree with the view expressed in your letter that, for the satisfaction of the ryots, it is advisable that measurement should be by the local bigha, which can always without trouble be converted into the standard bigha.

104. *Section* 102.—I am much in favour of this power being retained. I remember a case which occurred in Furreedpore district when I was Judge of Dacca, in which the ryots were being dreadfully harassed, and the entire business of the zemindari (and

This was before Furreedpore was made a separate judgeship.

it was a large one) brought to a stand-still by the quarrels of the proprietors. The estate at length was placed under a manager under Regulation V of 1812. I think the power ought to be retained in the hands of Government *in terrorem*. I do not suppose that the interests of the estate would suffer nearly so much from Government management, as they would have suffered from the quarrels of the proprietors. The power ought of course to be used only with the greatest caution, and I would allow the application to be made only by the Collector. Anybody of course might inform the Collector, but the district court ought to be set in motion only with the consent of the Collector.

105. Chapter X of the Bill has been expressly excluded from consideration. Chapter XI is connected with it. I need only say of these chapters that they will be very valuable if carried out properly ; but it seems scarcely possible to overrate the difficulty and labour of carrying them out satisfactorily.

On chapter XII also I have no remarks to offer.

CHAPTER XIII.

106. This chapter brings us to the vexed question of distraint. On this point I am sorry the view I take is wholly opposed to those expressed by the framers of the Bill, and I am afraid also to those expressed in your letter.

107. I am prepared to admit that the power of distraint has sometimes been abused by the zemindars; but, on the other hand, it must be remembered that the ryot is very dishonest about paying his rent, and very ready to avail himself of all the shifts the law allows to put off the payment of the zemindar's dues. Unless the zemindar has the sharp and swift power of distraint continued to him, it will be in many cases extremely difficult for him to realize his rents. Besides which the power of distraint is really, though it may seem a paradox, a more humane made of realizing rents than suing a man in court. The landlord must get his rents somehow, and by distraining he simply compels the recusant or dishonest ryot, when he has funds in hand, to apply part of them to discharge the first lien on them, viz. the landlord's rent. Surely this is more beneficial to the ryot than the only other course which the zemindar can take—to sue him in court, to sell his land, or to arrest him and send him to jail; and even supposing that the zemindar's servants do some little distraining on their own account, the ryot probably loses less by it than he would by being dragged into court. Again, to take up one of the cases quoted in your letter, namely of the zemindars having availed themselves of the power of distraint to recover time-barred debts, is it clear that they are wholly to blame ? If the arrears were really due, were not the ryots who pleaded limitation dishonestly quite as much to blame.

108. Thinking, therefore, that it is absolutely necessary to allow the zemindars to retain the power of distraint, I agree with the opponents of the Bill that the restrictions which the Bill proposes to place on the power of distraint will deprive it of all its efficacy under the law as it at present stands ; when the crop is nearly ripe, the zemindar sends his naib or gomasta to effect the distraint, and he can distrain 50 or 60 ryots, if necessary, as swiftly and inexpensively as he can distrain a single one. It is often the case that, after the zemindar has distrained a few ryots, the rest come forward and pay their rents amicably. The present system is therefore speedy and cheap, and discourages litigation. But under the distraint permitted by the new Bill, the landlord will first have to make an application under section 141, and he will have to make an application in respect of *every ryot* who has not paid his rent, because of course now the fact that some of the recusant ryots are distrained will no longer have any effect on the remainder, who will know that they cannot be treated summarily. Then, again, it will be necessary for him to decide much earlier in the season whether he will exercise his power of distraint, the ryots will thus get wind of his intention, and will of course do their best to thwart him. It will probably be wise for a landlord to apply for an order to distrain at least three months before the crop is ripe. Then it does not appear that an order for distraint will be granted of course. The landlord must first give *primâ facie* proof of the justice of his claim. Considering the pressure of work in all courts, this must lead to delay, and the Bill introduced seems to contemplate this. Suppose, further, that the ryots getting wind of the application come in and oppose it, the court could scarcely refuse to listen to them, and this would lead to more delay. Then, if it be argued that by prohibiting the removal of the produce you get over this difficulty, I would ask, how long might the proceedings be protracted ? How long is the produce to remain in the threshing-floors, and who is to take care of it there ? If you leave the produce unwatched. the owners may carry it off. If you leave the zemindar's people to watch it, they will certainly be charged with stealing it. If you send civil court peons to take charge of it, you would let loose a horde of locusts, who will take from the ryots far more than the zemindar's men ever did ; and lastly, if the ryots of a border village combine to carry off the grain, and then decamp across the frontier, who is to prevent them. Believing, therefore, that the power of distraint is one which must be conceded to the zemindar, I most earnestly deprecate its being hamperd by restrictions which will deprive it of all its efficacy. Then, again, what security is there that the court officer sent to distrain will act impartially ? He will ordinarily be, I suppose, a court peon. Is there no risk of his colluding with one side or the other, and either rendering the distraint nugatory, or more probably playing into the zemindar's hands, and assisting in committing oppressions on the ryots if the distraint has been applied for, for improper purposes.

109. I pass on now to chapter XIV, Judicial Procedure, as under section 159 the High Court may hereafter make rules as to what sections of the Code shall apply to suits under

this Bill. It does not seem necessary to discuss the point here. I do not see why section 163, sections 121—127, and section 129 of the Code should have been summarily excluded; it would have been more symmetrical to have left them to be dealt with by the High Court. It was proper specifically to exclude sections 305 and 320—325C, because they embody a new principle, and it is desirable that the Legislature should say whether this principle is to be applied to rent suits or not.

Section 163*D*.—I extremely doubt the possibility of serving summons by post. In these provinces post-office peons are not more trustworthy than civil court peons, and the difficulty of procuring proof of service will be very great.

110. I also deprecate the extension of section 189, Civil Procedure, to appealable cases. Many of the cases arising under the Act will be very intricate and will depend generally on the effect of oral evidence. The lower courts are often very careless and perfunctory in taking notes in non-appealable cases. The pleaders themselves seldom take notes, and I fear the time has not yet come when we could everywhere rely on such notes as are taken. When, however, the presiding officer knows English, he might take down the depositions in that language, as is done in the criminal courts, which would save some time.

I disapprove of the last paragraph of section 169. What valid reason can be imagined for postponing a decree till the year next but one, save that of favouring a poor man in his cause. No subordinate court in the mofussil ought to be entrusted with such ill-defined discretionary powers. Indeed I doubt if any court should be entrusted with them. For every time that they would be used to remedy a wrong, they would be used twenty times to commit one.

Section 170.—I propose a slight alteration in this section. As it stands at present, a landlord who sues a tenant for ejectment for breach must first request him, if the breach is capable of being compensated by damages, to pay damages, and allow him a reasonable time within which to pay them; then if they are not paid, and he sues the ryot, the court may still award damages, and the ryot, if he pays them, may protect himself from ejectment.

111. Now the way this section will work will, I think, be the following. No tenant will ever pay any attention to the notice: he will reflect that, even if sued, he will still get a *locus par intentia;* that if sued he can plead first non-receipt of the notice; second, that the time allowed was not reasonable; third, that the damages claimed were excessive; in the ordinary course of things, he will reflect, it must be a year before the landlord gets a final order for ejectment (for there must be an appeal from such an order), and he will then be able to save his holding by paying up the decree.

112. The proviso therefore that the landlord must give the tenant notice will only enable the tenant to keep the landlord at arms length some weeks longer. I propose therefore that in lieu of the notice preceding the summons in the suits it should state what sum of damages the landlord would accept, and if these were paid within, say, six weeks, or on the first hearing day, into court, the suit should be dismissed, the stamp fee might in such a case be refunded, as the court would have done really no work upon the case. On a sufficient reason being made out, the court might permit the accepted damages to be paid by instalments, and if the landlord's claim to damages was found on enquiry to be excessive, the court might make him pay full costs, as being responsible for the litigation.

113. *Section* 173—Seems to me to need a little clearing up. If the plaintiff sues for the alternative relief, does he thereby admit the trespasser to be a tenant, and to have been a tenant all along from the date of the tortious entry? And is the trespasser, if he objects to the rent assessed upon him, able to surrender the land at once (subject of course to the liability of paying the compensation assessed), or can the landlord insist on notice from him.

114. *Section* 174.—Suits falling under this section will be suits of no ordinary difficulty, and I should be extremely sorry to have to decide one of them in appeal with no memorandum of the evidence except some perfunctory notes taken by the court below.

115. On the question of judicial procedure, there remains only to be noticed the question raised in paragraph 25 of the Government letter.

116. First, as to the proposal to permit the zemindar to institute collective suits. I believe that this would be found quite impossible in ordinary cases consistently with securing the fundamental principle that a decree should not be passed against a man behind his back. In exceptional classes of cases it might possibly work satisfactorily; *e.g.* when a zemindar is suing the whole of the ryots of a village for enhancement of rent or for measurement. In such case every ryot would know he was sued, and a very stringent rule ought to make it impossible for a zemindar to sue any omitted ryot in respect of the same cause of action.

117. But to allow a zemindar to sue 20 or 30 ryots, not being the whole of a village, in a collective suit, I think, would be very unsafe. It would be very easy to institute a collective suit in such a manner that several of the defendants should know nothing about it until the decree was passed; and even if there was no reason to suppose that any malpractice had obtained, the courts could never make certain but that some of the defendants, by some accident, had not received notice of the suit.

118. But even supposing this difficulty is overcome, such a practice would shorten litigation much less than its authors anticipate. When the parties were brought into court, every suit must, if necessary, be tried separately, and little time would be saved.

119. How the collective suits may have worked in Chota Nagpore, I cannot tell; but a system which may work well among a simple and truthful race like the Kols, might not be equally successful when applied to the more instructed Bengalees.

120. I think also that it would be very unsafe to enact that no *ex parte* cases should be re-opened unless the amount of the claim was deposited. This might be making it absolutely impossible for the defendant to re-open it, and when it was a fraudulent case, every care would be taken to make the claim so heavy that the defendant could not re-open it. I believe that in the present day summons are usually honestly served. I very much doubt whether it was the case 25 years ago, and I attribute it to the wholesome check on fraudulent services, created by the knowledge that the courts of justice are constitutionally disposed to give a liberal benefit of the doubt to the defendant, though I entirely deny that they have the excessive and unfair bias against the landlords in such cases, which the opponents of the Bill ascribe to them. I think also that it would be dangerous to prevent any ryot appealing unless he deposited beforehand the amount of the decree. In the case of appeal, however, as the appellate courts could always have the judgment of the lower court to guide it, appellants might specially in simple rent suits be compelled to deposit, certainly the costs of appeal, and perhaps, at the discretion of the court, some portion of the decretal money. Such an order should not be open to appeal.

121. The only plan I can suggest for shortening litigation would be to give the courts the power, when many suits are instituted, all involving substantially the same point, to insist on one or two selected cases being tried as test cases, and all the other cases decided accordingly. Setting aside cases of such a class as measurements and enhancements, there are to be found, even in common rent suits, many cases which turn entirely on a single point.

122. For instance, in many cases it is apparent that the real question in dispute is, whether certain jamabundies filed by the landlord, or certain batches of dakhilas filed by the ryots, are correct. Every experienced Judge knows that this is practically the only point about which the parties are at issue; and that, as he decides in one case, so he may decide in all. Other cases are whether the rents of a particular village are cash or corn rents, and there are several other classes of cases which I need not particularize. No doubt even at present the courts try as much as possible to save time by hearing such suits, as the phrase is, "together;" but this is not so effectual as if the matter were thoroughly threshed out on a single test case. Moreover, as a certain amount of evidence has to be gone into in each case, so much economy of time is not effected: and it sometimes also happens that some of the cases in which evidence has been carelessly recorded are taken up on appeal and get remanded. I think that a system by which the real question at issue was fought out in one or two test cases would be more satisfactory, cheaper, and more expeditious than the present system of hearing cases "together."

123. Beyond this suggestion, which does not perhaps go very far, I really cannot suggest any method for shortening litigation in rent suits that would be also consistent with the still more important object of securing to each party a fair trial.

CHAPTER XV.

124. This chapter calls for little comment. I would only suggest that the section 176, clause *c*, should contain a proviso that the purchaser might raise the rent of such holdings to the average of the arable lands of the village if it is let below it, otherwise a tenure-holder might improperly diminish the value of his tenure by letting lands for such purpose at nominal rates with heavy fines, thus practically selling a portion of the tenure for his own benefit. I presume the court throughout this chapter means the civil court.

CHAPTER XVI.

125. This chapter merely recounts the existing Patni Sale law, with some moderation of language. I think it is almost a pity to abandon the old phraseology, which has received a judicial interpretation, for a new phraseology, which may lead to many doubts.

CHAPTER XVII.

126. The only point I feel some doubt is at clause "*d.*" The commutation of rent in a strictly equitable manner will be very difficult, and when the landlord is a fair dealing man, and the ryot strong enough to protect himself against the extortions of the underlings, commuting is not a bad system. Possibly, however, it is not in cases of this sort that pressure would be brought on the ryot to contract himself out of the right.

127. *Clause* "(*g*)".—I have already expressed my opinion that a non-occupancy ryot ought not to be allowed to make improvements except on such terms as are agreed on with the landlord.

128. *Section* 216.—This is perhaps the best solution of the bastu question. I have in my paragraph 67 suggested some rules to define the bastu tenant's position a little.

CHAPTER XVIII.

129. *Section* 222.—In the interests of small co-sharers, I think this section should be struck out, leaving the matter to be governed by the existing Case law on the subject. It will make it impossible for any co-sharer to move unless all his co-sharers agree to join him. This will be a great hardship on the smaller proprietors. One single proprietor will be able to stop the action of all the others.

130. It often happens that in coparcenary estates, where the proprietors are on bad terms, a single proprietor will refuse his consent to any enhancement measurement, &c. As the law stands at present, it seems clear that one out of many co-sharers may do the following acts:—

(1) If the ryot has agreed to pay rent separately to the co-sharer as single co-sharer, he may sue him for his single share, 21. W. R. 46.

(2) A single co-sharer may serve a notice on any tenant for enhancement of the rent and sue him for rent at an enhanced rate, making his co-sharers defendants in the suit. • I. L. R. 7 Cal. 633.

(3) And one of several co-sharers can in a similar manner proceed to a measurement. I. L. R. 10 Cal. 36.

131. If this section is maintained, it will be impossible for any co-sharer in an estate to do this, unless all the other co-sharers unite; and consequently one or two obstinate or indolent co-sharers will be able absolutely to stop all the rest of the coparceners in doing anything to improve their estates, and will force them either to abandon their just rights, or to have recourse to the tedious and expensive alternative of partitioning the estate. I have always looked to the position of co-sharers in this respect as a very hard one. I strongly deprecate their being deprived of the equitable relief which the law, as settled by the decided cases, affords.

132. I have now commented on all the points that occur to me in this important Bill, and I wish only further to say that where I have not expressly noticed any section, I intend generally to assent to it.

C. E. G.—Reg. No. 4587C—313—31-7-84.

No. 320, dated Chupra, the 30th July 1884.

From—H. W. GORDON, Esq., District Judge of Sarun,

To—The Secretary to the Government of Bengal, Revenue Department.

I HAVE the honour to submit herewith my note on the revised Bengal Tenancy Bill, called for in your circular No. 5T.—R., dated 28th May last.

CHAPTERS II AND III.

Paragraphs 4 and 5 of Government letter.

2. The definition of ryot in section 5 (3) does not cover all classes of ryots, *e.g.*, those holding under *unregistered lakhirajdars*, who are neither proprietors nor tenure-holders as defined in section 3 (2), read with section 3 (1) or section 5 (1). The definition should be amended so as to include such ryots.

3 *Section* 5 (5).—The word "part" is too general. If the tenant let, say, a few cottahs of his land, he could scarcely be designated a tenure-holder within the meaning of section 5 (1), and yet under the above section the legal presumption will be that he is. Some specific portion, say a *fourth* of the holding, should be named in lieu of the word "part." In other respects, I think, the presumption is a fair one and should be retained.

4. *Section* 37.—I doubt whether the provisions of this section will secure the object for which it is devised, or will be workable in practice. It is hoped that this section will discourage sub-letting. At any rate, it is considered to be a restriction on sub-letting, and at the same time that it will deter speculators from purchasing occupancy rights and improve the condition of the actual cultivators of the soil. But if it does discourage sub-letting by occupancy ryots, then, I presume, occupancy ryots will not sub-let for fear of being converted into tenure-holders, and money-lenders or speculators will therefore not be deterred from purchasing occupancy rights. And if the occupancy does sub-let, as provided in the section, and is thereby converted into a tenure-holder, I do not see why in the long run these occupancy rights, which may be acquired in due course by their sub-lessees, will not eventually pass into the hands of money-lenders Further, if the occupancy ryot sub-lets, will he come forward of his own accord to be registered as a tenure-holder? Will it not be to his advantage to conceal the fact that he has sub-let more than half his holding; for is not his position under the law better as an occupancy ryot than as a tenure-holder? How, then, can it be ascertained whether he is a tenure-holder or an occupancy ryot for the purposes of section 37? This is a difficulty which merits serious consideration It seems to me, therefore, that instead of retaining this section, which will hardly achieve the desired end, and will be very difficult, if not impossible to work, it would be more prudent and politic to impose further restriction on the transferability of the right of occupancy, so as to prevent, as far as possible, occupancy holdings from passing into the hands of speculators, and the danger to be apprehended therefrom, that the cultivators of the soil may by such transfer be reduced to the position of day-labourers. I will deal with this point when discussing Chapter V of the Bill.

CHAPTER III.

Paragraph 5 of Government letter.

5. *Tenure-holders.*—If section 37, as I have suggested in the preceding paragraph, be excised from the Bill, the Courts will not, I think, have very great difficulty in deciding what holdings are and what are not tenures. The definition of tenure-holders in section 5 (1), the provisions of section 5 (4) (with clause (*b*) excised), and the legal presumption (with the word *part* altered) in section 5 (5) will afford very material aid to the Court in determining this question. As regards enhancement of tenures, no instance has ever come under my notice during my service in Behar, and such cases, I am of opinion, will under any circumstances be very rare The reason is that the principal tenure-holders in Behar are indigo-planters, who farm large tracts of country on a rental fixed by contract, and therefore incapable of enhancement. Generally speaking, I do not think the grounds of enhancement of tenure-holders and occupancy ryots should be the same. In some parts of Lower Bengal these tenures are of far greater value than the zemindari itself, and they are thus capable of paying enhanced rent in far greater proportion than occupancy ryots. The provisions of sections 6 to 10 on the subject of enhancement of tenures seem to me good and should be retained. The remaining sections of this chapter (III) do not appear to call for any comment.

CHAPTER IV.

Paragraph 6 of Government letter.

6. I think the 20 years' presumption rule should be retained. The zemindars, in my opinion, have not shown sufficient grounds for its repeal. No landlord who has a properly organized and supervised *sherishta* ought to find it difficult to rebut the presumption. It may be that there are cases in which auction-purchasers and other transferees of the landlords' interests are placed in an unfavourable position in this respect, especially when the out-going landlord sides with the ryot. But it seems to me that the principle of *Caveat Emptor* may very well be applied to

such transferees. Every purchaser of landed property, whether by public or private sale, should, for the protection of his own interests, see that he is acquiring, not only a valid title to the property he purchases, but all necessary documents, *e.g*, village account books and papers, &c., which will enable him to know in detail what the rental of his newly-purchased estate is. The ryot's interest should not be prejudiced merely because the estate changes hands. He is no party to the transaction. Generally speaking, I am of opinion that it is much easier for the landlord to prove that the tenants' rent, or rate of rent, has been changed within 20 years than for the tenant *to* prove the opposite. It has been suggested to me that in the case of *bonâ fide* auction-purchasers of an estate, when the Court has reasonable grounds for thinking that the ryot is supported by the out-going zemindar, the presumption should not be made. But I am of opinion that such a discretion should not be vested in the Court. I would, therefore, retain the presumption in its present shape without any modification.

CHAPTER V.

Paragraph 7 of Government letter.

7. When an estate covers a large area (some area should be specified), I am of opinion that the capacity of a settled ryot to hold on an occupancy title all land betoken should not extend over a whole estate, but be limited to some local division, *e.g.*, a mouzah or village, which is a well-defined area. The privileges conferred on a settled ryot by section 25 (1) are curtailments of the rights of the zemindars, as they give him rights of occupancy at once in lands which, under the existing law, he could not acquire in less than 12 years. Such being the case it is, I think, but fair to the zemindars that this privilege should be confined to land situated in the *villages* in which, according to the definition in section 21 (1), the tenant is a settled ryot. I fear the provisions of sections 25 and 26 will embitter the relations between landlord and tenant, and cause considerable increase in litigation.

8. With reference to section 27 (*b*), I think the parent estate should be deemed to be the estate referred to in the preceding sections, otherwise, owing to the frequency of partitions in Behar, settled ryots would be deprived of rights which these sections accord to them. I see no objection to the date fixed in clause (*b*). I would retain sections 28 and 29. The former applies to cases of sole ownership and the latter to cases of joint proprietorship, and they do not therefore apparently conflict. In cases of joint ownership section 29 will, I think, prevent right of occupancy lands from being converted into khamar or nij-jot lands.

Paragraph 8 of Government letter

9. I doubt whether an absolute power of transferability of his occupancy rights will improve the status of the agriculturist, which is one of the principal objects of the Bill, notwithstanding restrictions on transfer and other safeguards provided in the Bill. There will, I fear, always be the danger of some of the best lands in the country passing into the hands of mahajans and speculators, and of the actual cultivators of the soil being reduced to the condition of day-labourers. It is true that occupancy rights are already transferred in this district, and other districts of Behar, but these transfers, as far as my experience goes, are generally brought about by the landlord himself, who sells and in most cases purchases the occupancy rights in execution for arrears of rent of the holding itself. Mahajans and speculators will not often purchase under the present law, because their title may not be recognized by the landlord. But matters will be different when absolute power of transfers is conceded to the occupancy ryot. Ejectment in execution of a decree for arrears causes great hardship in many cases, and an execution sale is, I think, preferable. While, therefore, retaining transfer by sales of the occupancy holding in execution of a decree for its own arrears, I think it would be wise and prudent to restrict transfers by private sale or gift in other cases to resident ryots or village cultivators, *i. e.*, to the people with whom such lands would be most likely to be settled in case of abandonment or relinquishment. Such a restriction is no doubt opposed to the principle of freedom of contract; but when the improvident character of the people for whom the Government is legislating be considered, any objection on this head loses much of its force. When the people are naturally careless and reckless of their own interests and welfare, their rulers are bound to step in and protect them The provisions of section 210 of the Bill show that this principle has been recognized and accepted by the Select Committee. I would not allow an occupancy holding to be sold in execution of a decree for debt other than its own arrears, and some provision ought to be made in the law allowing a co-sharer, who obtains a decree for arrears of his share, to sell the entire holding in execution.

Clause (*b*) and clause (*g*) of section 31 are provisions in favour of the ryot and should, I think, be retained in the Bill. Similarly sections 32 to 34 are in favour of the zemindar, and should also be retained as a counterpoise to the rights and privileges conceded to the ryot. But in section 33, after the word "decree," I would insert "for its own arrears," so as to exclude decrees in respect of other debts. Section 37 has been dealt with in paragraph 4 of this report, and I can only add that I think that if the above mentioned suggestion as to restriction on transfer if occupancy rights by public and private sale be adopted, the safeguard contemplated by section 37 will not be needed.

Paragraph 9 of Government letter.

10. *Enhancement*—(*a*) *Grounds.*—The determination of the "prevailing rate" is no doubt difficult, and enhancement suits on this ground are consequently rare. But no instances of the abuse of this

provision have ever come under my notice in this district or in Mozufferpore; and as it is of long standing, and its abolition may tell unfairly on the zemindars, I am of opinion that it had better be retained. The grounds of enhancement embodied in section 43, clauses (*b*), (*c*), (*d*), are good and should be retained.

Paragraph 10 of the Government letter.

11. (*b*) *Limits to enhancement.*—Limits to enhancement by private contract out of Court should, I think, be the same as those allowed in Court—certainly as regards increased prices or fluvial action (as provided in the Bill)—and I am also inclined to think that the limit of enhancement on the ground of the prevailing rate should not be more than 25 per cent. on the previous rent. Zemindars, when they sue for enhancement on this ground, do not, I believe, ask for a larger increase than 25 per cent. The assimilation of the limits of enhancement in Court and by private contract will tend to discourage litigation.

Under section 41 (2) the registering officer should be strictly enjoined to explain the nature and contents of the contract to the tenant, and this ought to prevent any abuse of the provisions of this section. Generally, I am of opinion that the limitations on enhancement, subject to the above suggested modification in regard to the prevailing rate, are fair and appropriate. Section 46 should be retained intact. It is best to leave the Court to determine the amount of enhancement, with due regard to the provisions of clause (*b*) of this section, (*i*), (*ii*), (*iii*), and (*iv*). A definite limit to enhancement on the ground of improvements cannot well be fixed by law. In cases of enhancement on the ground of rise on prices, the increased cost of cultivation is a material factor, and a provision should therefore be added to section 45 directing the Court to take this matter into consideration.

Paragraph 11 of the Government letter.

12. *Section* 42.—I hardly see how any alteration can be made in the provisions of this section. Re-letting is a matter of contract and private arrangement between the landlords and the new tenant, and it is, I believe, an understood thing that the new tenant pays the same rent as the previous tenant. The proposed law is therefore in accordance with existing custom. I do not think it ought to be assumed that the rent which the new tenant agrees to pay is generally higher than the prevailing rate. Solitary instances may occur in which the rate is higher, but then the rate cannot be regarded as the prevailing rate. The rent again of a new tenant under section 42 can only be enhanced 25 per cent. in pursuance of a registered contract entered into by the parties themselves. Whatever danger there may be of the prevailing rate being gradually enhanced by re-letting, this will be lessened by improving the status of the non-occupancy ryot in the Bill. This point will be noticed in Chapter VI.

Paragraph 12 of the Government letter.

13. *Bastu lands.*—As far as my experience goes, *bastu* or homestead land in Behar are not generally held as integral portions of occupancy holdings They are held separate, and the sale of the arable portion of the holding does not affect them. Homestead lands are mostly held rent-free, where the occupier is a man of high caste, or where his services are often called into requisition by the landlord. In cases of an old occupant ryot, the rent payable by him for his homestead land is usually very low. In Behar, I believe homestead lands lie within defined boundaries, generally denominated the *tola* or *bustis*, and the lands of *tolas* or *bustis* have no connection with the agricultural holdings of persons living in the *tola* or *busti*. In the absence of any express written contract between the parties, I am of opinion that homestead lands in Behar should be treated as permanent and *makarrari* (held on a fixed rental) holdings.

Paragraph 13 of Government letter.

14. *Reduction of rent.*—I think section 51 should be left intact. Clause (*a*) will, as far as my experience goes, cover all cases in Behar.

15. *Commutation of rents.*—The method of commutation seems fair and equitable, but the principles embodied in section 53 will probably be productive of disputes between landlord and tenant, and so tend to increase litigation. Occupancy ryots holding land on a money-rent almost always enjoy greater advantages than those holding land on a rent payable in kind. Commutation of grain-rents into money-rents will therefore benefit them and be injurious to the landlords. Disputes will consequently arise between them and litigation ensue

Paragraph 14 of Government letter.

16. *Price lists.*—I am not aware whether price lists have been preserved in this district for a period of 15 years. If they have, I should say they are not very reliable, seeing that they were prepared by the police, and were not properly checked or verified. Fresh lists, after most careful enquiry, would have to be drawn up of the prices of staple food-crops for the last 15 years. A correct table is of course essential for the guidance of the Court in an enhancement suit under section 45.

Paragraph 15 of Government letter.

17. I am of opinion (*vide* paragraph 10 of this report) that some allowance should be made for increased cost of production, *e. g.*, wages of labour, &c., in cases of enhancement on the ground of a general rise in prices. This is an essential matter, and should be considered by the Court. No distinction need be drawn in the Bill "between remote districts unconnected by railways, &c., with large markets and districts enjoying good communications." The Court will take these matters into consideration under section 45 when considering the question of *increased cost of production* in any particular case. In Behar the prices of staple food-crops alone should be taken into consideration.

CHAPTER VI.

18. *Non-occupancy ryots.*—I concur in the view expressed by His Honour the Lieutenant-Governor in paragraph 20 of the letter of September 27th, referred to in paragraph 16. There can be no doubt that the status of the non-occupancy ryot needs improvement, especially in Behar, where the growth of occupancy rights is strenuously opposed by the landlords. The provisions of Chapter VI are not, I consider, calculated to improve the condition of non-occupancy tenants. Limits of enhancement in respect of occupancy ryots should be the same as those for non-occupancy ryots. I do not see why an occupancy ryot should hold at lower rates than a non-occupancy ryot merely because he has held the land for a longer time. He is protected from ejectment by the provisions of the Bill, whereas the non-occupancy ryot is not. The limit of enhancement in both cases should not, I think, exceed 25 per cent. of the previous rent. Further, leases should not limit the term of the tenancy, as this is opposed to the custom of the country. If the limits of enhancement in the case of both classes of ryots be equalized, then the apprehended danger of the effect of the provisions of section 42 on the prevailing rate will be considerably lessened.

Paragraph 16 of Government letter.

CHAPTER VII.

19. *Under-ryots.*—I think the provisions of this chapter afford sufficient protection to under-ryots. Section 37 has been remarked upon in paragraph 4 of this report. Section 38 will scarcely discourage sub-letting, as short leases are generally beneficial to the sub-lessor; and if the occupancy ryot in section 38 sub-lets more than half his holding under that section, he will, I presume, be converted into a tenure-holder under section 37. If this view be correct, the objections I have taken to section 37 in paragraph 4 of this report will be even stronger in the case of section 38, inasmuch as the period of the lease being limited to seven years, the acquisition of a right of occupancy by the sub-lessee (assuming the sub-lessor to be converted into a tenure-holder under section 37) will be effectually prevented. I therefore doubt very much whether section 38 will either discourage sub-letting or tend to improve the *status* of the cultivators of the soil.

Paragraph 17 of Government letter.

20. Sub-letting has, I believe, done considerable harm to ryots in Behar. By sub-letting I mean the creation by proprietors and tenure-holders of *ijaras* (farms) or *thikas* (leases), *katkinas* (sub-leases), and *dar katkinas* (sub-sub-leases), and so on. These intermediate tenures and sub-tenures are particularly ruinous to ryots when, as is often the case, the rental imposed is the *gross jumma*, without leaving any margin of profit to the tenure or sub-tenure-holder. The result is that the landlords in these cases, either by force or by harassing litigation, endeavour to compel their ryots to pay increased rent under the name of *ijaradar* or *hak thikadari*. Bitter disputes and ruinous litigation ensue. It is no doubt impolitic to fetter freedom of contract in any way, but in the interest of the peasantry, who are the sufferers in these cases, some provisions of law should, I think, be enacted to check and discourage the creation of these intermediate leases. All contracts which leave less than a profit of 10 per cent. on the actual gross collections might be declared void. Some provision might also be made to compel superior landlords to give correct accounts of the gross collection of villages, instead of the exaggerated and false *jummabundis* which are now frequently produced.

21. *Butwaras* again in Behar are a fruitful source of litigation between landlords and ryots. A good plan would be to empower Collectors at the time of each *butwara* to prepare a register of holdings, *i.e.*, a record of rights, binding *primâ facie* or conclusively on the *malik* and ryot. In the *jummabundis* filed by *maliks* for the purpose of butwaras they generally ignore *ryotti* holdings by styling them their *khudkasht*.

CHAPTER VIII.

22. The question of 20 years' presumption has been dealt with in paragraph 6 of this report, and I do not find that the remaining provisions of this chapter call for special comment. Section 83, referred to in paragraph 17 of the letter of the Government of India, is, I think, in conformity with the practice and custom in Behar.

Paragraph 18 of Government letter.

CHAPTER IX.

23. *Improvements.*—The provisions of sections 87 to 94 are mostly unobjectionable. In Behar all classes of ryots should be allowed to construct wells, as they are absolutely necessary for irrigation purposes. I think landlords rarely object to ryots digging wells on their holdings. Section 90, clause (2), will probably tell hardly on the zemindar. This hardship might be mitigated by making the proposed law of payment of compensation not applicable to such cases.

Paragraph 19 of Government letter.

24. With reference to the question raised in paragraph, 2 clause (1), of the letter of the Government of India, I do not feel competent to offer an opinion. It can, I think, be best dealt with by the executive authorities.

25. *Surrender and abandonment.*—I am of opinion that there should be a written notice of surrender or relinquishment, as under the present law. Verbal notices tend to fraud and perjury on both sides. With

Paragraph 20 of Government letter

this modification I would leave section 96 untouched. The way to deal with abandonment of holdings is very difficult, and the danger apprehended to arise therefrom may be diminished if the rate of rent of occupancy and non-occupancy ryots be equalized, as has been suggested in a former part of this report. I do not think an occupancy holding which has been abandoned should be sold. In all case of abandonment the landlord should have a right of resumption, subject to the provisions of section 96.

Paragraph 21 of Government letter.

26. *Measurements.*—I see no objection to the measurement of *lakhiraj* holdings in an estate or tenure, but it should be limited, I think, to a survey of external boundaries. The proprietor should have no right to enquire into internal details. I am of opinion that measurement should be made according to the officially determined local pole, which, if necessary, could be subsequently converted into English measure. This would be fairer to all parties interested, and less likely to lead to disputes.

Paragraph 22 of Government letter.

27. *Managers.*—I would expunge sections 102 to 109 from the Bill. The appointment of a Manager under the circumstances set forth in section 102 is, I think, unnecessary and will be prejudicial to the interests both of the landlords and tenants. In the province of Behar, where there is a large number of sharers in small villages, the appointment of a Manager would probably leave no profit to insignificant shareholders, and any inconvenience which might be felt by ryots in consequence of the existence of a large number of co-sharers and the indefiniteness of their shares in any village is done away with by the provisions of section 73, clause (*c*), which enable them to deposit their rent (when such a state of things exist) in the office of an officer specially appointed by the Local Government on this behalf in any local area. In case of any inconvenience to the public that may be apprehended by any impending breach of the peace, the provisions of the Criminal Procedure Code afford, I consider, sufficient safeguard.

CHAPTER X.

Paragraph 23 of Government letter.

28. On the provisions of this chapter I am not asked to offer any remarks.

CHAPTERS XI AND XII.

Paragraph 24 of Government letter.

29. I have no observations to make on Chapter XI. The record of a proprietor's private lands, as defined in section 138 (1), is absolutely necessary in Behar, where zemindars try their best to include mal lands within the designation of *zerat* or *nij-jot* lands, and endeavour to eject ryots by calling *ryotti* lands their *zerat*, and so prevent accrual of rights of occupancy. I am not aware of any other kinds of proprietor's private lands in Behar besides those mentioned in section 138 (1).

CHAPTER XIII.

Paragraph 25 of Government letter.

30. *Distraint.*—If distraint is to be retained as part of the law, and on a careful consideration, I think, in the interest of the landlords, that it should be. I am of opinion that some exception should be made in regard to the crops of ryots who have no settled abode, or are wandering or semi-nomadic cultivators, and that the landlords should be legally empowered to destrain their crops of their own motion and without application in the first instance to the Civil Court. As the Maharajah of Durbhunga points out, even a day's delay in such cases would be fatal, and the law of distraint would thus be a dead letter, so far as this class of tenants is concerned. Simultaneously with distraint in such cases, the zemindars should send to, or file in, the Court a verified application in the form of a notice stating the particulars provided in the Bill. Further, I think applications under section 141 should be dealt with more promptly by the Court than that section provides. The words "with as little delay as possible" in clause (2) leaves the matter too much in the discretion of the Court. A specific time, say one week should be fixed within which the Court should admit or reject the application. I would not allow the applicant any further time to adduce additional evidence. All his documentary evidence should be filed with his application, and if he wishes to adduce oral evidence, and the Court require it, he should have his witnesses in attendance on the date fixed by the Court—fixed of course with due regard to the limitation of one week alluded to above. It is to the interest of a *bonâ fide* applicant to get his application for distraint admitted without delay, and it therefore can be no hardship for him to have all requisite evidence ready at once for the Court's consideration. In other respects I do not see what can be done to quicker or cheaper procedure in cases of distraint.

CHAPTER XIV.

Paragraph 26 of Government letter.

31. *Judicial Procedure*—I approve of most of the provisions of this chapter, but I consider that some alterations and additions might with advantage be made.

32. I object to section 164 in its present shape. Many instances may occur in which the third party is an auction-purchaser of the rights of the former landlord, or one whose title has been declared by decree of Court, and it might be a hardship on him to have to make out

a *primâ facie* case against the original plaintiff. In cases falling within the purview of this section, I think it would be better to allow intervention on the part of the third party pointed out by the defendant. A month's or even a fortnight's notice might be given him to intervene, and on his so doing the Court could, for the purposes of the suit, determine who is entitled to the deposit, and refer the plaintiff or intervenor, as the case might be, to the Civil Court for adjudication of the question of title. If the person pointed out by the tenant does not appear, or the plea raised by the tenant-defendant appears to the Court to be frivolous and vexatious, it may in its discretion direct the defendant to pay damages, not exceeding 12 per cent. on the money deposited, in addition to all costs incidental to such plea. In such cases no appeal should, I think, be allowed. Clauses (3) and (4) of section 164, as they stand, are calculated to encourage litigation, as they provide for an intermediate suit between a simple rent suit and a title suit.

33. The word *patwari* should, I think, be added in section 161. It is desirable that zemindars residing within the local limits of the Court should verify their plaints and written statements themselves, unless the Court, in the exercise of a proper discretion, otherwise directs. An exception may be made in the case of *purdanashin* ladies.

34. Some of my subordinate judicial officers have suggested that the words "after due and careful enquiry" should be added to the form of verification prescribed in the Civil Procedure Code The suggestion is, I think, a good one.

35. To section 163 (*e*), I would add :—"But the Court may, at its own discretion, ask the party to file a written defence." This seems necessary when a number of analogous suits are being tried together, as, if each defendant has to be examined by the Court, much time will be taken up, and the trial will consequently be protracted

36. In section 171 (*e*) the words "after commencement of proceedings" seem vague. "After service of summons," "or any notice of the institution of a suit, &c.," would be better. Section 168 is a great improvement on the present law, and will diminish litigation by preventing appeals in petty cases. But as I believe more than half of the rent suits are for sums below Rs. 50, the selections of officers to exercise final jurisdiction under clause (*b*) will of course have to be very carefully made, and heavy work should not be thrown on them, otherwise there will be a tendency to slur it over. It will rest on the District Judge to see that a proper distribution and allotment of work is made, so as to ensure justice and avoid delay. I doubt the advantages of allowing landlords to sue a number of ryots collectively. When there is a large number of analogous suits, the plaint would be of inordinate length, and besides it would not, I think, be fair to the ryots to have the landlord's claims against them all mixed up in one document. Such a practice might occasion hardship or injustice to them. As a matter of fact, analogous suits are now generally tried together with the consent of the parties, and are governed by one judgment, but a separate plaint and written defence are filed in each case.

CHAPTER XV.

Paragraph 26 of the Government letter.

37. *Section* 176(*d*).—I doubt the propriety of this clause. It gives occupancy right to sub-tenants against zemindars. If the occupancy right be not protected, the sub-tenant will endeavour to buy the holding and thereby keep off outsiders and money-lenders.

Clause (*c*).—Instead of "any lease of land," "lease given by the defaulter or his predecessor on interest" would be better.

Clause (*a*) will lead to disputes. The revenue sale law does not protect interests of this kind.

38. *Sections* 178 *and* 179.—Attachment and proclamation might be made simultaneously to avoid delay. The remaining sections of this chapter do not appear to be open to any particular objection.

CHAPTER XVI.

Paragraphs 27 and 28 of the Government letter.

39. The incorporation of *patni* sale law in the Bill is open to no objection. The same law might be made applicable to other permanent transferable tenures, such as *gantys*, *howalas*, *new howalas*, *&c*, which are held by middlemen; also to tenures of 200 bigahs or upwards. Such tenures engross the greater part of a *zemindari;* and if the payment of the rent of such tenures be withheld, the *zemindar* is unable to pay the Government revenue, and his estate is consequently sold for arrears.

CHAPTER XVII.

Paragraph 29 of the Government letter.

40. The provisions regarding *chur* or *dearah* lands are, I think, open to no objection. I would leave section 210 intact. The provisions embodied in it are highly necessary for the protection of the cultivating classes, who are too weak to protect themselves. The section is sufficiently complete.

CHAPTERS XVIII AND XIX.

Paragraph 30 of the Government letter.

41. I have no remarks to offer on these chapters.

42. *Government of India's letter, paragraph* 2 (2).—I think large dependent talooks might be registered as independent talooks liable to pay revenue to Government direct. This would save the zemindar the trouble and responsibility of collecting the rent from the holders of such talooks. Smaller dependent talooks might be subjected to the summary patni sale law to afford the landlord facilities to pay the Government revenue. It would be necessary, however, to have a register of such talooks prepared before they are made subject to the summary sale law.

Paragraphs 31 and 32 of the Government letter.

43. *Government of India's letter, paragraph* 2 (3).—The summary sale procedure might be made applicable to rent-free tenures in cases in which the road cess and public works cess exceeds, say, Rs. 100 per annum by bringing to sale such a portion of the tenure as would be sufficient to meet the demand, or the cesses might be made payable by the *lakhirajdar*, say, six months in advance of the time fixed for payment of them to Government, so as to enable the zemindar to institute a suit and realize the cesses in time.

44. *Government of India's letter, paragraph* 2 (5).—The saving provisions of section 214 might be applied to tenures similar to *utbandi* and *hal-hasli* tenures. I do not know of any such tenures in Behar.

45. *Government of India's letter, paragraph* 2 (6).—As regards *gorabandi* and similar holdings, referred to in paragraph 34 of the Government letter, perhaps it would be better not to take away the zemindar's right of pre-emption. I am informed that in Bhagulpore *gorabandi* holdings are very ill-defined, and are frequently the subject of disputes with the *malik*, so that the saving provisions of section 217, if applied to them, might lead to useless litigation. On this point, however, my experience does not enable me to express any positive opinion.

46. I am not aware of any "local custom in Behar which recognizes any right in a ryot to his holding, although he has not held it for 12 years, and so acquired a statutory right of occupancy." The subordinate judicial officers of this district, whom I have consulted, are also unaware of the existence of any such local custom.

Paragraph 3 of Government letter to Judges.

W. J.—Reg. No. 4843C—315—2-8-84.

No. 523, dated Arrah, the 5th August 1884.

From—J. TWEEDIE, Esq., District Judge of Shahabad,

To—The Secretary to the Government of Bengal, Revenue Department.

I HAVE the honour to enclose a report on "The Bengal Tenancy Bill," as called for in your letter, marked Land Revenue, Circular No. 5T—R, dated Darjeeling, the 28th May 1884.

I have not had time to have my original draft copied, so have nothing for record in this office I therefore send this cover registered, and would also ask the favour, if the report be printed, of your sending two copies for deposit in my office.

Report on "The Bengal Tenancy Bill," as called for by the letter of the Government of Bengal, marked Land-Revenue, Circular No 5T—R, dated Darjeeling, the 28th May 1884.

I MUST premise that I am of opinion that the Bill ought to be considerably modified. There are at least three reasons for this. *First*, there is no call for a Bill of so extensive a scope as that under consideration; no agricultural crisis; no material defect in the present law; no great difficulty in working it. *Secondly*, it affects injuriously the "*actual proprietors of the soil*," as these words have been authoritatively interpreted by the highest courts, and as they must stand until they have been repealed or specially explained by legislation. *Thirdly*, it is at variance with another (unrepealed) Act (viz. Regulation II of 1793), inasmuch as it ousts the civil courts from jurisdiction in certain civil matters, and replaces these within the jurisdiction of executive officers.

2. I make these remarks only to explain that what I have to say below is said on the assumption that the Bill is to go on on its present lines. Much of what I have to say would not be said were the whole question still an open one.

3. I follow as nearly as possible the paragraphs of the letter above quoted.

CHAPTER II OF BILL.

Paragraph 4 of letter.

4. The definition of a "*raiyat*" and of a "*tenure-holder*" seem clear and distinct until section 37 comes into play. It is, I think, in its main provision, quite unworkable. It depends on a non-existing Act of the Legislature for its force and vitality, and the "*explanation*" may leave many an undoubted "*raiyat*" a "tenure-holder." Great confusion will arise. The question of whether half has been let or not will be a source of constant difficulty. Every "occupancy raiyat," who wishes to be considered a "tenure-holder," may enjoy the advantages of the latter, along with the actual status of the former, by sub-letting more than half his property for six months or less.

5. The object of section 37 is that it shall act as a check on sub-letting I fear that in many cases it will have a contrary effect.

6. Two ways occur to me, as the result of many years' thought on the subject, by which both sub-letting and speculative dealing in occupancy rights by classes of the community who are objected to (as mahajuns) might be checked. One is to enact that no occupancy raiyat who sub-lets his land, or any part, shall recover in a court of justice excess rent by more than 6 per cent. on what he himself pays, except in the reserved cases (*a*) and (*b*) of section 38. The second plan, which seems to go quite to the root of all disputes about rent and sub-letting, is to declare legislatively, and as far as such a thing is possible, finally, what maximum proportion of the value of the produce shall go to the "actual proprietor of the soil," and what is the maximum which may be taken from the actual tiller of the soil—to fix, in fact, a fair statutory rent which shall be the maximum payable by the person who "raises the crop," and to leave all ranks and grades of "landlords," from sub-letting occupancy raiyats to zemindars, to share this rent as the contracts existing among them may regulate, the State ceasing to vex itself about how it is divided or who shares in it; this is my simple and direct proposal. The proposal includes a settlement of all questions relating to under-raiyats and non-occupancy raiyats. The proportions which seem to me to be fair are 33 per cent., and 67 per cent, calculated on the value of the produce, without allowance for costs of production or risk or anything. Thus the landlords would get their 33 per cent. without risk or trouble, and the actual tiller of the soil his 67 per cent., less costs of production, risks of bad seasons, and so forth. Value of produce should be settled with reference to staple produce only, and on the basis of current price-lists; and where the cash amount has once been fixed, it should not be revisable within less than decennial periods. (Here see *post* paragraph 21.)

7. The presumption in section 5(5) will often be (what no "*presumption*" ought ever to be) *primâ facie* contrary to the facts: as, for example, when a raiyat is diligently cultivating one hundred bighas and has sub-let one bigha.

8. As connected with this subject, I note that it is impossible to think of two persons having an occupancy right in the same piece of land. If therefore under-tenants are allowed to acquire this right, the same right must become extinct in the previous holder, *i.e.* the original occupancy raiyat. It is at this point, viz. when an occupancy raiyat had lost his own occupancy right by allowing it, through lapse of time, to pass over to his under-tenant, that the former should become a "tenure-holder," and not before, or (except by contract) otherwise.

CHAPTER III OF BILL.

Paragraph 5 of letter.

9. The provisions here made for the enhancement of the rent of tenures seem fair and workable. Whenever it is disputed as to whether a holding is a "tenure" or not, the court can easily try the matter as a question of fact with reference to the definition. If section 37 stands, however, the matter will become difficult, and endless delays will occur, while the true area of the occupancy raiyat's land is being ascertained, and the question of whether he has sub-let half or not is being enquired into.

CHAPTER IV OF BILL.

Paragraph 6 of letter.

10. *The 20 years' presumption rule, section* [64 (2)], is here introduced for discussion. I would say—

i. The "presumption" becomes year by year less likely to be true, and probable truth is the only justification for a legal "presumption."

ii. The new law, like the old, should require of the tenant a clear, formal plea that his tenure has been held, &c, since the date of the Permanent Settlement. Section 64 (2) seems to dispense with this most essential preliminary.

iii. The rule presses with hardship on both landlords and tenants. I would suggest the following more general rule instead of the present one:—"Whenever in any suit under this Act, in which an enhanced rent is demanded, a tenant shall plead that he has held his tenancy since the date of the Permanent Settlement at a fixed rent, or rate of rent, which has never been changed, and it is shown to the satisfaction of the court that the tenancy is an ancient tenancy, and that it has passed by descent in at least one proved instance, then, and in that case, the plea shall be taken to be true, unless the contrary shall be proved by the plaintiff."

CHAPTER V OF BILL.

Paragraph 7 of letter.

11. I abstain from making remarks on the *settled raiyats'* rights, because, as I understand section 25, it enlarges the occupancy rght in a manner and degree which (according to the views which I hold) are unfair to the rights of maliks. I cannot detect any conflict between section 28 and section 29 (1). The former relates to cessation of occupancy right in one who has previously held it: the latter to one of several maliks acquiring also that kind of tenant-right by cultivating as a tenant for the necessary 12 years under his co-maliks. I can see nothing in these sections which would lead one to fear that if an occupancy raiyat purchased a share in his malik's estate, his own previously existing estate in the lands) of his tenancy would be in any way affected.

Paragraph 8 of letter

12. *Incidents of occupancy rights especially, section* 31 (*b*) (*f*), *and* (*g*). Of (*b*) (improvements I fully approve, and shall make some remarks on the subject later (see *post*, paragraph 40)

13. As to (*f*) (transfer), I think it may be taken for granted that it has been finally decided to make occupancy rights transferable. The prevailing opinion among landowners, native and English merchants, and mahajuns, is that it will be a fatal gift to the tenantry. The opinion of the tenantry cannot be ascertained because they, as a body, have no definite knowledge regarding the Bill, nor any mouthpiece. As a matter of general principle, I favour the largest possible liberty of action and freedom of contract; and, with the right of the landlord to select his own tenant preserved by the pre-emption clause, I am in favour, as a matter of principle, of granting full transferability, *with one exception.** But I doubt, in the face of so strong a body of opinion making the other way, and the objections entertained to certain classes of the community having facilities for the acquisition of occupancy rights—I doubt, I say, whether the time has yet come for making occupancy estates transferable at the pleasure of the raiyat.

* See paragraph 17.

14. This clause 31 (*f*) [as well as (*g*)] requires the words "*subject to the provisions of this Act*" instead of the present words "*subject to the rights reserved to the landlord by this Act.*" The principal section here alluded to may be taken to be section 97 (against splitting up tenancies), and it is more in the nature of a restriction on the tenant than of a right reserved to the landlord.

15. *Clause* (*g*).—So long as a "*sub-lease*" is not allowed to introduce any change whatever as between the original lessor and the original lessee, I can see no objections to sub-leases as mere matters of contract. Section 97 goes a certain length in this direction, but I think it should be re-cast so as to be more comprehensive in the direction above indicated, *i.e.*, the safe-guarding of the contract between the original lessor and lessee.

16. "*Mortgage*" gives a "*raiyat*" practically the power to fix his own price. To 34 (2), therefore should be added a proviso thus: "Provided a landlord, in order to redeem a mortgage, shall in no case be required to pay a larger sum than the fair value of the property, such value to be settled, if necessary, by the court." Fictitious mortgages, by which purchases at auction sales have practically to pay the price (or more) over again to the owner, by way of getting rid of a previously existing "burden," are by no means uncommon.

17 "*Gift*" renders nugatory all the previous provisions made to preserve the landlords' rights. All "*transfers*" will be called "*gifts.*" It is not said in the Act (as implied by section 21 of the "report") that a landlord may contest a gift. No "gift" should be valid unless made by the landlord's previous consent, which should be in writing and registered, so as to avoid future disputes. This is the exception alluded to in my 13th paragraph above.

18. I think no possible means of preventing sales to mahajuns can be invented except a plain provision which shall prevent them from buying. And how define a mahajun? Many a "raiyat" is a "mahajun," if dealings in loans of money and grain make a man a mahajun. Such a provision as "a raiyat shall not transfer by sale except to another raiyat," leaving any alleged violation to be tried on the facts proved, would go far to meet the

object in view, namely that transfers by sale shall "be restricted to the cultivating classes only." But what about "gift" and "mortgage," which are only roundabout ways of sale, when the donor or mortgagor so desires? And if a raiyat cannot "mortgage," he cannot raise a loan, so that on the whole I conclude that, if transferability be granted, it becomes impossible to exclude any class of Her Majesty's subjects from becoming purchasers. Sub-letting, as has already been shown, may be so regulated as in effect to exclude the objectionable classes by limiting the possible profits from sub-letting to such a figure as shall repel (not attract) the monied mahajun class.

Paragraph 9 of letter.

19. (*a*) *Grounds of enhancement*, (*b*) *Extent of enhancement*.—My opinion is that the ground of enhancement based on the "*prevailing rate*" should be struck out. The old "*pergunnah rate*," if ever it existed, has been lost and is irrecoverable. In the present day the "*prevailing rate*" is, as a rule, manufactured by the aid of raiyats bought over to submit to enhancement, and the new rate thus introduced is made to spread over the country by the agency of the courts. The other grounds should be those proposed in the Bill, and those only.

20. As regards the extent of enhancement, I have already stated that my opinion is that a legislative "fair and equitable" rate of rent should be established; that enhancement should be allowed up to this rate; and that, subject to this limit only, full effect should be given to the evidence in each case. To say that the evidence justifies a four annas increase in the rupee, but the court shall give only two annas or three, seems an unjudicial provision, and the existing details and restrictions will give rise to paralysing difficulties in practice.

21. I should perhaps have specially noted above that my proposal, as set forth in paragraph 6 of this report, and again in my last preceding sentence, differs materially from that referred to in paragraph 10 of the letter of the Government of India. My proposal is so adjusted that it leaves the same margin of profit in all conceivable circumtances, both to the landlord and to the tenant. It is suited equally to every locality and every staple crop. It cannot give any encouragement to enhancement claims, for, if a favoured raiyat pays only 12 per cent., the same process as is necessary in case of the Bill as it stands must be gone through under my plan, if it is sought to make the raiyat pay 13 per cent. Of course, without "*average standards*," the scheme is unworkable, and this is neither more nor less true regarding this scheme than regarding the existing scheme: for wherever, under the existing scheme, increase of productive powers, or even increase of prices, has to be enquired into, all the matters referred to by the Government of India as all but hopeless of solution must be determined. These matters at least can never be settled by a judicial enquiry held by courts in each separate case. Either the problem must be abandoned, or enchancements must be made with reference to staple crops, average yield, prevailing price and cost of production as executively ascertained, and this although every one must admit that such ascertainment will be only approximately correct. As regards costs of production, I would consider these sufficiently provided for by the large margin left (rather more than 33 per cent.) to the raiyat over and above an equal division of the produce between him and the landlord. The figures may be thus stated: profit to landlords 33·3, profit to actual tiller of the soil 33·3, all risks and costs of production as falling on the raiyat 33·3 = total 100.

Even if my scheme is considered to be at least very similar to that referred to in paragraph 10 of the Government letter (India), still I would most respectfully urge a reconsideration of the matter, as long experience forces on me the conviction that no scheme can be practically workable except one or other of two—either "*demand and supply*" unchecked and uncontrolled, or a legislative "*fair rent*" fixed on the actual tiller of the soil, and divided by conflicting landlord interests as custom or contract may regulate.

22. Private contracts of enhancement should be free of all control so long as the actual tiller paid no more than 33 per cent. But they should be evidenced only by a registered instrument. I must here note prominently that in many instances the "*registering officer*" will be found not to be a man capable of deciding whether a contract of this kind is or is not in accordance with the Act [41 (2)]. In fact, this fact should be ascertained by an officer of the rank of a Deputy Collector who, after satisfying himself on all necessary points, should endorse the document "*passed for registration*," which endorsement should be sufficient authorization for registration in so far as (1) conformity to the Act, and (2) valid and voluntary execution by the tenant, are concerned. Stamp and other details being found correct by the registering officer, registration should be granted on bare presentation by the lessor, and without further enquiry at the registration office. Courts of justice, however, should not be in any way bound by the finding of the Deputy Collector (or registration officer, if he still be maintained, charged with this duty), that a contract is in accordance with the Act.

Paragraph 11 of letter.

23. This paragraph well illustrates the abundant crop of difficulties which springs up from legislating in too great detail, and in some measure in a direction contrary to the lines of political economy. I cannot solve the difficulties propounded in this section. One thing is quite clear, that without a specific Act to the contrary, a landlord may, under judicial interpretations of laws now in force, do whatever he likes with land which is part of his property, and in which no one holds an adverse estate. Section 42 will, if non-occupancy rents are left wholly uncontrolled, doubtless work to the enhancement of occupancy rents up and up indefinitely—will introduce, in fact, a second set of occupancy rates, which

will be used as "*prevailing rates*," and worked so as to bring up the occupancy rents of other lands to a level with the new set of rates. It should, however, be noted that section 42 does not give to a settled-raiyat *a right to demand* a lease of the land there spoken of. If the landlord does not choose to let the land to a settled-raiyat, settled-raiyats must do without it. Therefore the words "*he shall not be bound to pay more than*," &c., seem hardly appropriate to the circumstances. I think that nothing but trouble can come from the section as it stands; that the landlord's present right to do what he chooses (subject to the statutory rent) with land which is, or which becomes, his *khas*, should be fully and generously acknowledged everywhere, and that no legislation on the subject should take place.

Paragraph 12 of letter.

24. *Bastu lands.*—No case of enhancement of these occurred within the term of my experience in Behar. But I have had much to do with the subject in Nuddea and elsewhere. I never could discover any good grounds for enhancing the rents of *bastu* lands. If ever legislative interference were justifiable as between lessor and lessee, it is in case of these lands. A fixed uniform rate should be declared without scruple as applicable wherever separate assessments on account of *bastu* lands exist. Here in Behar, so far as I know, these lands are not separately assessed. I had, not long ago, a series of cases in which a landlord sought to evict his tenantry from their homes because they disputed his demand for rent. Such was the real, but not the alleged, ground. It would be difficult to say what the alleged ground was. It resolved itself into an assertion that the *bastu* land was held on service-tenures. I found that the lands were held from time immemorial as adjuncts to the cultivated area, but not part and parcel thereof. I dismissed the cases. They are now on appeal. Probably the finding above recorded expresses what is true generally regarding *bastu* land in this district. But the Collector will be able to speak more authoritatively on this point

Paragraph 13 of letter.

25. Here we require a third ground of reduction of rent, viz, where the benefit accruing from a landlord's improvement, in consideration of which an enhancement has been obtained, ceases or becomes of less advantage than before.

26. In 51 (*a*), for "*or other like calamity*," I would read "*or any other cause*."

27. As regards section 64 (3), "a fixed proportion of crop" cannot, I think, be *by itself* considered a "natural and equivalent antecedent of a money-rent invariable over a term of years." I have already stated my views on this subject in some detail. [See also paragraph 62 (*i.*)]

Paragraph 14 of letter.

28. *Price-lists.*—No remarks as regards their preparation, but a record of my opinion of their great and beneficial advantages, and of their superiority, even if not absolutely accurate, to any evidence at present available to a court of justice. I would make these lists as true and accurate a statement *of prices only* as possible, leaving for allegation and proof in courts any of the minor matters affecting them in their relation to enchancement claims mentioned at the close of the paragraph under reply. These would all form proper elements for consideration when a court was deciding what was a fair and equitable degree of enchancement.

CHAPTER VI OF BILL.

Paragraph 16 of letter.

29. *Non-occupancy raiyats.*—I have already exhausted this subject. I have only to add that the mind's-eye should be continually directed to these, and not to the "occupancy" or "fixed-rate" raiyat. The non-occupancy raiyat at one end, and the ultimate landlord at the other, are the two factors. Intermediate persons are of less interest, at least to me. Settle on the ancient *bhowli* system (indigenous to the country), transformed into cash equivalents, how much of the produce shall go to the "non-occupancy" raiyat, or actual tiller of the soil, and how much to the actual proprietor. Let this be "*fair and equitable*," and do not trouble much as to the share of the proprietor's rent which goes to him, and the share which goes to intermediate landlords, whether these latter be "occupancy raiyats" or others. Secure privileged raiyats in their privileges by prohibiting enhancement where prohibition is possible, and by limiting enhancement to the reasons already discussed, as also to the degree in which these reasons affect each tenancy in case of "occupancy raiyats," and a very simple and a workable Bill will be the result. I very thoroughly agree with His Honor the Lieutenant-Governor's remark, near the foot of page 9 of the letter under reply, that "if a rack-rent limit is to be preserved, it should be the same for both occupancy and non-occupancy raiyats," only for "*rack-rent limit*" I would write "*fair and equitable maximum.*"

30. My view on the last section of paragraph 16 is that, if this Bill becomes law, the zemindars will bestir themselves to make the best of their rights, and that all, except indolent and foolish men, will take adequate means to prevent the growth of further occupancy rights. The plan of *maxima* rents at one third produce-value practically means fixed rents at that proportion for ever, as the highest payble, with advantages on the tenant's side of holding at less if he is already an "occupancy-raiyat," or if "demand and supply" enable him to get land on better terms. I do not see what more should be wished or aimed at even for a "non-occupancy" raiyat. I cannot decide in my mind whether the provisions as they stand improve the position of the non-occupancy raiyat or injure it, or leave it *in statu quo nunc*. Experience alone can show.

CHAPTER VII OF BILL.

31. I have nothing to add to what I have said regarding under-raiyats' rents. These raiyats are my "*actual tillers of the soil*" in the lowest grade, as the "*occupancy-raiyat*" is of the highest grade (whose rent admits of enhancement). I would allow an "occupancy-raiyat," under section 38, to grant a lease to endure as long as the lessor's tenant right (of any kind) might endure, with right of occupancy to the under-tenant (holding long enough), and translation to the rank of *tenure-holder* to the "occupancy raiyat" whose occupancy right thus passes from him; all as has been already stated. It is these endless details, and want of unity either in principle or in practice, which will make this Bill, if passed, very difficult to work.

Paragraph 17 of letter.

CHAPTER VIII OF BILL.

32. *Rent receipts.*—The provisions regarding these are of the utmost importance, and might alone suffice to remove two kinds of the disputes about rent, and of the difficulties of the courts. Every step made to substitute something in place of the worthless oral evidence of the country is a great gain to the administration of justice.

Paragraph 18 of letter.

33. *Section* 70 (1).—After "*receipt,*" I would insert "*or a receipt partly printed and partly written.*"

34. *Section* 70(4).—It is very important that the word "*substantially*" should be struck out. What is actually necessary should be finally prescribed, and nothing short of full compliance tolerated. To how many appeals will the word "*substantially*" give rise! And how often shall we see illustrated the truth of the old proverb "*Quot homines tot sententiæ*" on the question of "*substantial*" sufficiency!

35. The "arrear" column on the back of the receipt should specify the year for which the arrear is said to be due. So also the "current" year should be named. Payments made shortly after the close of a year are generally considered as "current," though technically they are "arrears." The mention of the year would remove all doubt.

36. In connection with this subject, I may remark that in two large zemindaries of this district, the plan of using printed forms (with manuscript entries)—foil and counterfoil—has been adopted, to the great benefit of all parties concerned, including the courts. But I must add that unless the forms are numbered and bound into a book, as in the two zemindaries above spoken of is done, there will be little or no benefit. The mere order [section 70 (2)] that a zemindar shall keep a counterfoil is plainly inadequate, for he may at any time deny that such a thing ever existed. The law therefore, as it at present stands on this subject, leaves the courts very much as they have been during the last half century whenever a raiyat puts forward a receipt which the landlord says is forged. It is also a pity to come so near to the solution of a most important matter, and yet leave it unsolved. My suggestion is, as it was in 1862, to provide at all munsifis, thanas, and other stations, a supply of properly secured books, foil and counterfoil, the sheets of which shall be duly numbered, or so marked as to render alteration or suppression impossible; to keep these for sale at cost-price; and to compel all rent-receivers, without exception, to make use of these receipts, and of these only.

37. *Section* 80.—From a legal point of view, "*interest*" is "*damages.*" I would therefore strike out the second clause, beginning "*provided that,*" and for "*such damages,*" near the end of the first paragraph, I would read "*interest.*"

37. *Section* 82(5).—It should be made very clear that the appraisement or division of crops shall not be hung up pending the decision by the civil court of the matter referred to it under this clause. To *bhowli* rent business and to distraint the continual objection arises that the rich man oppresses the poor by delays and proceedings which threaten the total destruction of the crop. The reference under criticism should end in an *ex post facto* decree for damages only, and the division and subsequent gathering of the crop should proceed at once under such orders as the Collector may issue.

38. *Section* 84. *Liability for rent on change of landlord.*—After "*transferred,*" enter "*or assigned.*" When a transfer or assignment is made by private contract, the notice should come from the transferor. A, a tenant and debtor, cannot well, *i.e.* safely, put an end to his contract with B, his landlord and creditor, at the order of Z, alleging himself to be the transferee of B. Much litigation has arisen on this point.

39. *Section* 85. *Illegal cesses.*—These, as it appears to me, require to be dealt with much more in detail. In these parts, additional payments under the names of "*neg,*" "*sarakh,*" &c., are the fixed rule. The former is a contribution to the putwari's salary; the latter is paid for village roads, and the High Court has ruled that it must be paid where past practice has created an obligation, even where the tenant also pays "road cess" and "public works cess." In my opinion it would be well to enact that wherever road cess is paid by any tenant, he shall not be bound (anything in past practice notwithstanding) to pay also this cess known as "*sarakh.*"

CHAPTER IX OF BILL.

40. *Improvements, &c.*—The question so often the subject of litigation, namely whether the planting of trees by a ryot should be considered an authorized improvement or not, ought to be here legislatively settled. My view is that all ryots should be allowed to plant such easily-removed things

Paragraph 19 of letter.

as bamboos and plantain trees at their pleasure; but that, without the consent of the landlord, they should not be allowed to plant permanent trees, like mango and jack, over a larger area than one-twentieth of their holdings.

41. 93 (1)– *Compensation for improvements on ejectment.*—After "*holding*" must surely be put in the words "*otherwise than in execution of a decree for arrears of rent.*" In nearly all cases of such ejectment a landlord has to go without his arrears. To make him also pay up for improvements which may have been made against his will [90 (2) seems to me a very hard provision.

42. 94 (1) (*e*).—I think that the time for which an "improvement" has been enjoyed should always be taken into consideration in reduction of the amount of compensation money.

43. Every rank and class of raiyat should be allowed to dig a well wherever he thinks fit. No "compensation" should be allowed for wells. They give their own profit at once, and sufficiently, to those who use them.

Paragraph 20 of letter.

44. *Surrender and abandonment, section* 95 (1) (*c*).—A presumption of abandonment from the fact that the landlord lets the land to another tenant will, in these parts, work much wrong. I may say that here it is almost the ordinary course of practice, when there is a desire to get rid of a tenant, or to make land *khas*, simply to let the land to another who fights his way into his grant if he can, by force or through the courts. The courts are generally used. The work is begun by appealing to the criminal courts, on an allegation of possession for a time, of having sown the crop in the ground, and so forth. This, as a rule, fails of success, but has always a chance to succeed. Then follows the civil suit by the unsuccessful party. The clause should, I think, be struck out.

45. *Section* 96.—Under the arrangement here set forth, the crop will be lost, as well as a considerable portion of the year's rent. The provisions for the safeguarding of the raiyats' interests, as here laid down, are, I think, somewhat more than one has a right to expect who has (i) voluntarily abandoned his residence, (ii) given no notice to his landlord, (iii) made no arrangement for the payment of rent, and (iv) ceased to cultivate the holding both by himself and by proxy. The rights of such a man should cease and for ever be at an end from the date on which he does these things. I do not think that his rights are in any way jeopardized by the provisions here proposed. The case contemplated by section 96 has of course no analogy with the case of letting over the head of a lessee still present on his land, noticed in my last preceding paragraph.

Paragraph 21 of letter.

45. *Section* 101 *of Bill.*—I think that the measurement of lakhiraj holdings by the zemindar should be confined to the external boundaries of each detached plot of such land. Actual measurements should be by local standards, so that parties interested may be able to understand the proceeding.

Paragraph 22 of letter.

46. *Section* 102 *of Bill.*—I think that, as far as matters connected with a Rent Bill are concerned, the provisions for the appointment of *managers* are unnecessary. The raiyats seem sufficiently protected against the effect of disputes among sharers by the extended provisions for deposit of rent. The two clauses (*a*) and (*b*) (inconvenience to the public and injury to private rights) are clearly matters at best very remotely connected with a Rent Bill.

CHAPTER X OF BILL.

Paragraph 23 of letter.

47. *Record of rights.*—My views on this subject are not asked.

CHAPTERS XI AND XII.

Paragraph 24 of letter.

48. I know of no other land than that mentioned in these chapters in which the right of occupancy has not been allowed to the raiyat. I entertain a very strong objection to the provisions here made relating to the *zeraat* lands of maliks. These, as everyone knows, are portions of land which maliks have managed to preserve from the gradually increasing force of tenant-right. They constitute the demesne lands, or home-farm lands, of the native gentry. In my opinion, everything should be done to assist them in all honest attempts to resist the spread of tenant-right of any kind or degree over these lands. Chapter XII is (in detail) subject to at least these objections—(*i*) it gives to "*any tenant of the land*" a right to challenge the malik's title, which includes raising a dispute where none before existed; (*ii*) it goes counter to a well-known and firmly-established principle of law, by requiring that the owner of the land shall prove his title, that the person in possession shall justify that possession, and this by proving its continuance backwards for full 12 years, the period required for *gaining* a title by adverse possession, or "prescription" as it is sometimes called; (*iii*) it violates the principles enunciated in Regulation II of 1793, by making revenue officers judges of the courts of first instance in purely civil court matters.

CHAPTER XIII OF BILL.

Paragraph 25 of letter.

Letter of Government of India, paragraph 26.

49. *Distraint.*—I observe that the question of abolishing distraint altogether is no longer an open one. I therefore merely point out that action by distraint is a very clear violation of what has elsewhere* been laid down as a fundamental axiom, viz. that a ryot shall not be compelled to satisfy, even provisionally, any money claim

unless he has been heard in his defence. The provisions contained in the Bill on this subject are, in my opinion, good, and should be enacted in supersession of the existing law, the retention of *distraint* being taken as decided on.

CHAPTERS XIV AND XV OF BILL.

Paragraph 26 of letter.

50. *Judicial Procedure.*—No one, I think, will deny that the procedure in suits under this Act should be as prompt as is consistent with justice, and no one, I also venture to think, will be of opinion that the existing proposals will secure that end. Even attempts to shorten processes are not successful. Thus 163 (*c*) provides that no "*written statement*" shall be filed without the leave of the court. But a written statement must be prepared *by some one*. The only question is, by whom? By the defendant, or by the munsif? This has been overlooked. Also any man of experience will say that it is ten times more convenient to have a "written statement" put in at once by a defendant, than for a presiding officer to endeavour orally to find out what a defendant, generally illiterate and often dishonest, really stands upon as his defence.

51. The principles on which I should like to re-cast this chapter are as follow. Some of the clauses which follow are based on a conflict of ruling of the High Court, which, however, it does not seem necessary to quote.

I.—The ruling principle should be to assimilate the proceedings under the Rent Act to proceedings in Courts of Small Causes, both in respect of procedure and of the result or effect of decisions. If this were done, the following, in my opinion most beneficial, results would follow:

(*a*).—In all money disputes the decision of a Munsif or of a Subordinate Judge would be absolutely final up to such maxima as the Local Government might direct. (So of a Judge if he tried any original suit.)

(*b*).—Beyond these maxima, and up to Rs. 500, there would be an appeal to the Judge.

(*c*).—Only in cases over Rs. 500 could either side drag the other to Calcutta for appeal in the court of second appeal, or over Rs. 5,000 on first appeal.

(*d*).—The much-vexed question of the effect of determinations bearing on title passed by courts sitting as rent courts would be for ever at rest. Such courts (like Small Cause Courts) would take only what is called "*incidental*" cognizance of matters relating to title, in so far as they threw light on the ultimate issue in the suit. There would be no appeal from the opinion expressed after such "incidental" cognizance, but any party aggrieved might have his regular civil suit, if he desired it, afterwards. I notice here that a very little ingenuity on the part of either plaintiff or defendant secures an appeal, when an appeal is allowed in all cases of "*a question relating to title to land or to some interest in land.*" These words have never shut out anything from appeal which parties wished an appeal in. And in nine cases out of ten, it is the appeal and its attendant delays which parties seek; not any better justice than they get in the locality. I do not say this of myself, but on good authority. The chief discredit of our present procedure is that by allowing practically unrestrained appeals, a suit for five rupees arrears of rent may endure for two years and nine months without being in any way remarkable. *If my suggestions are adopted, they will furnish one solution of the long-vexed problem of how to allow rent-receivers to recover plain money-decrees with the least possible delay. And my plan does no harm to any one, or to his rights.*

(*e*).—A "reference" on any point of difficulty or doubt will admit of being made to the High Court, so that perfect security against error will be secured. This, under section 617, Code of Civil Procedure.

I specially recommend these suggestions to the consideration of His Honor. I hope that I am not the only person to whom they have occurred.

(*f*). The record of evidence should in all cases be made in the manner prescribed by section 163(*f*) of the Bill (not according to the Small Cause Court practice), and this with the view of giving the Judge something substantial by means of which to reach an opinion when he calls for a case under the second paragraph of 168(*b*).

(*g*.) In cases (if any) in which the prayer of the plaint is not to recover money due, the same rules of procedure and limited appeal should be applied as in cases of money claims. The *proper* valuation of the suit will here be the test of whether an appeal lies or not. I cannot see that a claim for enhancement is one on which specially an appeal should be allowed, except under the ordinary rule, as suggested for other money-claims. Such suits, of all others, are likely to be best decided in the court which has the greatest amount of knowledge of the locality in which they arise.

52. *Section* 163 (*g*).—An "*oral application for execution*" means only an application which the Munsif, and not the mukhtar, shall have the trouble of writing out. The particulars necessary before execution can issue must be obtained from the decree-holder, and must be reduced into writing by some one.

53. *Section* 164.—This section provides for two cases, but omits a third, which is the most important of all. It is the case of a ryot pleading that he *has paid* the rent claimed by the plaintiff to another person who (he says) is his true landlord.

II.—The decisions of the courts as to what ought in these circumstances to be done are so various that the matter must be now settled by the Legislature. All the confusion has

originated from the exclusion of section 77 of Act X of 1859 (intervention) from Act VIII of 1869 (B.C.) The cure is to replace that section with the words "*before and up to the commencement of the suit*" somewhat amended. Some Judges are rigid excluders of "intervenors" (under the law as it stands); others are more favourable to their admission; some hold that, whatever has rightly been made the subject of judicial decision by a civil court sitting to hear causes under the Rent Act, becomes as completely *res judicata* as matters decided by the same court sitting to try, say the validity of an adoption. Some lean the other way. Hence much litigation and the necessity for legislative action.

III.—All that is required is to re-enact section 77 of Act X of 1859, freely admitting "intervenors;" *nay, requiring courts to make them "parties,"* when the state of the pleading renders it expedient to do so; and prescribing the following as the issue for trial: "To whom previous to the occurrence *of the cause of action set forth in the case under trial, did the defendant pay rent?*"

If it appear that the rent was previously paid to the plaintiff, the suit should be decreed; if to the intervenor, it should be dismissed. No appeal should be allowed simply because the rights of the two parties may have been considered by the court. The result will not be "*res judicata*" (and this the law should specially declare). The party aggrieved should have his civil suit.

I have known strange results follow the exclusion of "intervenors"—results not creditable to the state of the law.

54 If I had any reason to think that these suggestions would be adopted, I would have sent a complete draft of how the expression of them could be best worked into the Bill as it now stands. But it is clear that such labour, at the present time, might be labour thrown away. I, however, myself attach very great importance to the scheme as sketched, because it shortens and simplifies procedure without violating any principle of law; it removes the present discredit of allowing endless appeals about trifles (which themselves are often fictitious); it allows appeals whenever appeals seem useful: it contains two corrective courses of action when appeal is not allowed;* and lastly, it will, I hope, go far to solve the problem out of which the present draft Act has come into existence.

* Namely under section 168 of the Bill, and under section 617, Code of Civil Procedure.

CHAPTER XVI OF BILL.

Section 28 of letter.

55. I am of opinion that Act VII (B.C.) of 1876 has worked so well that no better model could be found for legislation on the subject of registration of tenures. Certain rulings under the Act quoted would have to be considered in drafting a new Act on the same lines, or in amending the present one with the new subject as an additional part.

CHAPTER XVII OF BILL.

Section 29 of letter.

56. I think I have nothing more to say on the subject of "bastu" land (see *ante* paragraph 24), and I have had no experience in this district connected with either *utbundi* cultivation or *hal hasili*.

Paragraph 29 of letter.

57. *Section 210 of Bill.*—On the lines on which the Bill is built, I think that the provisions of section 210 are necessary, and that as they stand they are complete, without there being anything of a superfluous kind in them.

Paragraph 30 of letter.

58. *Pasturage.*—This is a very important matter, but one which, for want of sufficient local knowledge, I must leave executive officers to report on. Pasture lands seem to be constantly diminishing, tenants try to annex them piecemeal to their holdings, and maliks to their zeraats. Suits regarding them thus sometimes come before me, and from recollection of these I make the present remarks. The time will come when pasture lands for villages will have to be taken by contribution from the villagers, and after demarcation they will have to be carefully preserved as pasture-lands by authority.

Paragraph 34 of letter.

59. Here occurs mention of "*guzashta*"—a word used only, as far as I know, in this district. It may be translated "ancient." In correct use, its meaning is limited to the same thing as holdings which have been held at fixed rates from ancient times, which "*ancient times*" probably are from "*time immemorial,*" or, practically, from the time of the Permanent Settlement. They are hereditary and transferable at the pleasure of the holder, but do not admit of being subdivided. In ordinary use the word is also wrongly employed to express an "occupancy tenure." In most cases this is what is meant when the word is used alone. "*Mourasi guzashta*" is the phrase commonly used to express the more ancient tenure.

60. I do not think that the "*mourasi guzashta*" should be exempted from the pre-emption of the landlord. That privilege is employed on a principle which resides *in the landlord's position*, namely, his right to choose his own tenant. The ordinary "guzashta," which is simply the occupancy right, has, of course, no claim to exemption from the pre-emption clause.

61. There are no other special tenures that I know of in this district.

62. *A few remarks on some other points*—

(*i*) *Commutation of grain rents.*—Grain rents seem to be the original and indigenous method of paying rent. It is clearly the most just and equitable one; but the progress of

modern ideas makes against its continuance. It should, however, still be regarded when the question is *how much of the year's produce ought to go to the malik, and how much to the persons who raise the crop.* The native view held by both malik and tenant is that, when all risks are equally divided between them, about nine sixteenths should go to the malik and seven-sixteenths to the raiyat. Of course when all the risks are thrown on the raiyat by a fixed money rent, these proportions cannot remain; but on a consideration of all facts, and working from the present facts known about the division of produce, I have recommended one-third to the malik and two-thirds to the raiyat. I am afraid that section 53 of the Bill does not give sufficiently clear directions. How are (*a*) and (*b*), after being worked out, to be worked into each other so as to give the money rent? Even the letter of the Government of India does not help us much here. The consideration under (*a*) gives us, say, Rs 3 *per bigha.* The consideration under (*b*) gives us, say, 16 maunds of grain, value Rs. 16—to the malik Rs 9, to the raiyat Rs. 7. Question—What is the proper cash rent? My one-third principle would make the raiyat's rent Rs 5⅓ per bigha, nearly double Rs 3, which is a full moderate rent, as rents go in Behar. It also appears that 33 per cent. is liberal towards the zemindars. As regards 53(*b*), I would state broadly, as a plain judicial truth, that "*the average value of the rent* (*i.e.* here *grain*) *actually received by the landlord during the preceding ten years*" is a fact wholly unascertainable, even with merely approximate accuracy, *by courts.* As provided in the Bill, executive officers must do this work.

ii.—It is strange that the Bill contains no provisions on the subject of "*ticcadars,*" or is it that they are "*tenure-holders?*" Their real position is that of *contractors.* As long as they are left unregulated, the harassing of the raiyat is certain. The ordinary form of this contract is that the rent-roll is ascertained, 10 or 20 per cent. is added to this, and the contracting "ticcadar" covenants to pay the sum so reached annually to the landlord. The ticcadar's profit is got by illegal pressure on the ryots, who recognize him as a person who ought to be propitiated, and pay accordingly. Then comes in a "*dar-ticcadar,*" or "*khatkanidar,*" and both the superior and the inferior man have to be humoured. I think (*a*) that to grant a ticca, or to take one, except on a deduction of at least 10 per cent. on the jumma, should be made punishable with fine; (*b*) that the sub-letting of a "ticca" should be made absolutely illegal; (*c*) that a ticcadar should have no power to deal in any way with the raiyats or their interests, but should be confined strictly to the collection of the rents, as these may be truly stated in the *jummabundis.*

If any respectale ticcas, analogous to tenures, exist, as, for example, possibly in the hands of the planters of Tirhoot, these should be called by some different name (as *ijarahs*), and be dealt with by separate clauses of the Bill.

iii. A provision is urgently required as to how tenants may preserve their property in land while the same is under water for a length of time. The rulings do not help us much in this matter. I fear that land submerged and re-appearing, generally passes, on re-appearing, to the landlord; and this for two reasons: (*a*) ryots do not continue their ownership by paying rent while the land is submerged; (*b*) it is very difficult to show that the "reformation" has taken place exactly on the site which the land occupied before it was submerged. A ryot holding ten bighas often has these in ten different places (or more), and from this also the difficulty of identification is increased.

iv. The effect of the new law on existing facts and contracts requires, I think, further elucidation. It is generally the case that, when an important new Act, if passed, doubts on these points arise.

v. I think that the arrangement of the sections might in some respects be improved. For example, the rights of a "*settled raiyat*" are explained before the definition has been given. We have heard much of "*transfer*" before we reach the important controlling section 97. Similarly, we have read much about *ejectment* before being told in section 98 that no ejectment at all can take place except in execution of a decree of court. I would recommend that "*ejectment*" be made the subject of a single chapter in which every provision relating to that subject should be placed, and this with respect to each class of tenant-right, from that of "*tenure-holders*" downwards.

vi. It should be made quite clear that no "*oral*" business out of court should be allowed; "*oral*" *permission,* and everything of the kind, should be disallowed. Nothing should be accepted in pleading except *written notices served through the court.* There should be a strong presumption that these have been duly served. The "*onus,*" as at present placed by courts, should be changed, and should rest on him who says that the "notice" was not served.

vii. Considering that the present amendment of the Rent Law springs out of a recognised necessity to aid landlords in more promptly getting in their rents, it is very strange that the whole subject has dropped out of sight, so far as special mention in the Bill is concerned. I have read and re-read the Bill, but find no sections calculated materially to advance the original object of the new legislation. Paragraph 26 of the letter of the Government of India says that a glad welcome will be given to any suggestions for attaining a cheaper and speedier method of recovering arrears, "provided always it does not jeopardize the raiyat's right to have his case fully heard, and that it does not require him to pay money into court before his liability to pay is established."

(2.) I have already done two things. I have pointed out that the recovery of arrears of rent alleged (but not yet proved) to exist by the process of "*distraint,*" as detailed in the sections of the draft Bill, or as now in force under the present law, is a distinct violation of

the "*proviso*" laid down in the quotation with which my last preceding paragraph ends. I have also suggested a cheap and speedy means of reaching the desired end, with full rights of defence and a full hearing secured to the raiyat or other defendant. That, as will be remembered, is to treat rent debts as on the same footing as other money debts; to deal with them by the civil courts as other money debts are dealt with by Small Cause Courts; to prevent the protracting of proceedings for the recovery of such debts by shutting out the possibility of converting suits for these debts into what are called "*title suits*;" and by limiting appeals within the same limits as apply to other money debts. Other details have been given above.

(3.) This proposal will be opposed by both creditor and debtor, lessor and lessee, because it shuts off the possibility of those mutual harassments and contrived delays which litigants in this country so successfully study. It will be specially opposed by landlords (the persons desiring the more speedy way) because they have generally the longer purse, and can profit more than the other side by delays and oppressive litigation. The tenants, however, when combined for any common object, can always find plenty of money, and work out endless delays as well as their landlords.

(4.) I therefore think that I am bound to suggest an additional solution of the difficulty, *which may co-exist side by side with the scheme already elaborated.* In some aspects my second proposal is new—in part it has been put forward by others.

(5) At the back of the cry for a speedier mode of getting in rent was the allegation that, if rents were not promptly obtainable, revenue could not be paid and sale and ruin were the consequences. Therefore the scheme which I am about to state should be confined to such zemindars as are in direct communication with Government as payers of "revenue." This will exclude sub-letting occupancy raiyats.

(6.) The first step in this scheme is to make a fair list of the reasons for which Government exempts itself, in its capacity of zemindar, from the provisions of the Rent Law. I may not know all these reasons; but it seems that they must be mainly two—(*a*) the position of the officer in immediate charge or control of each property, and especially the fact that the money which is collected does not go into his own pocket; and (*b* that the system of accounts is such as to reduce to a minimum the chances of error in claiming payment from a raiyat who has already paid.

(7.) As regards the consideration arising from the fact that the money collected does not go into the pocket of the Government officer, it is to be said that, if that officer is a man capable of using strong measures of a doubtful kind in order to keep down his "arrears," he will find sufficient incentives in a consideration of his name, fame, and advancement in the service. The last is clearly connected with pecuniary gain.

(8.) The second step is to ascertain when and where the business arrangements of a zemindari of the ordinary kind are conducted—as regards registers, account-keeping, the granting of receipts, and so forth,—on so sound and complete a system as to "reduce to a minimum the chances of error in claiming payment from a ryot who has already paid:" to ascertain, also, the general good repute of the head of the zemindari. I could, from personal inspection, mention two properties within this district, on which all the necessary points above named already exist. Their existence should in all cases be established to the satisfaction of the Collector and superior revenue authorities.

(9.) The third step should be to authorize all zemindars, who should satisfy the revenue authorities as above written, on the points above written, to collect arrears as the managers of Government estates collect them.

(10.) The safeguards of the procedure would be two—1*st*, the withdrawal of the powers in case of their being abused, or in case of subsequent insufficiency in the system of records and accounts; *secondly*, by suit for damages by any one injured by erroneous use of the powers given.

(11.) A collateral advantage would be that by degrees such a record of rights would be made by the zemindars themselves, that Government might postpone the record which it proposes itself to make—a work at present very necessary, but such as will probably require a greater persistency and continuance than falls to the lot of most things in India, in order that it may reach its completion many years hence.

(12) Into details of my schemes I do not propose to enter; but I shall mention one essential detail, namely, that "*jummabundis*" shall be prepared in prescribed forms and kept in books consisting of sheets so numbered or marked that they cannot be tampered with. The present "*jummabundi*," as written on loose slips of paper changeable at pleasure, are of very little value in any disputed matter.

(13). I have some reason to think that the scheme just propounded would be accepted by zemindars as a solution of the difficulty out of which the present legislation sprang.

(14.) If it be argued that my proposal is contrary to the just "*proviso*" of the letter of the Government of India already quoted, I admit that there is a measure of truth in the argument. But only a measure. Two exceptions to that "*proviso*" have already been recognized. I do not propose even to add a third, but merely to extend the operation of the second exception to circumstances as nearly as may be similar to those to which it has already been recognized as admissible. The two exceptions are distraint and demands from tenants of khas mehals. I extend the latter to demands from tenants who, though not tenants of khas mehals, are tenants on properties of which the landlords are recognised to be honourable men (such as managers of khas mehals are assumed to be), and of

which the registers, records and accounts are kept up as fully, carefully, and truthfully as on khas mehals.

63. If there be any points on which a report has been called for in the papers under reply, and which have not been noticed in the foregoing paragraphs, this is because my experience or knowledge of the facts essential to the formation of an opinion is insufficient to warrant me in setting forth any views on the subject omitted.

J. TWEEDIE,

Judge of Shahabad.

ARRAH,

The 4th August 1884.

C. E. G—Reg. No. 5838C—327—22-8-84.

Demi official in answer to demi-official of MR. MACDONNELL, *dated Darjeeling, the 12th August* 1884.

Dated Arrah, the 27th August 1884.

Demi-official from—J. TWEEDIE, ESQ.,
To—The Secretary to the Government of Bengal, General Department.

I HAVE just sent off my proposed recast of the procedure sections of the Tenancy Bill. It is long; but as it aims at being a code complete in itself, its length cannot be helped. Endless confusion arises when officers are sent from one Act to another to pick out their proper procedure.

Its other salient points are :—

I.—It makes procedure as similar as possible to that of Courts of Small Causes, both in original and in appellate matters.

II.—It makes provision for summarily hearing intervenors.

III.—It makes provisions for preventing rent court suits being worked up into regular civil suits.

IV.—It settles many doubtful points of procedure.

V.—It wholly abolishes "remands," which cause much useless expenditure of time and money.

VI.—It leaves much to the intelligence of officers.

It abolishes second appeals in all cases in which the valuation does not exceed Rs. 500. This is the present rule (Code of Civil Procedure, section 586) in suits of the nature of Small Cause Court suits.

If some such procedure be adopted, one month in the first court and one month in appeal will be ample time for the disposal of rent suit cases. There will be very few second appeals.

If such procedure be adopted, schedule IV of the draft Bill (limitation) will have to be revised and added to.

I have to go off to Sasseram to-night, but hope to be back on Monday or Tuesday.

P.S.—If my proposal is printed, please send me two copies, as I have had no time in which to get a manuscript copy made of what I have written.

PROPOSED RECAST OF THE "JUDICIAL PROCEDURE" SECTIONS OF THE "BENGAL TENANCY BILL."

1. *Of the extent of application of this chapter* — Except as otherwise specially provided by this Act, all cases which arise under it, and all auxiliary questions connected with such cases, and all appeals shall be dealt with under the provisions of this Act, and not under the provisions of any general or other special law.

Explanation.—The word "*case*" includes an original suit; an application of any kind; proceedings in execution, and miscellaneous proceedings, filed in a court of first instance.

Illustrations.—

I. Service of summons shall be made according to the provisions of this Act.

II.—All questions of limitation shall be decided according to the provisions of this Act.

2. *Of the Courts.*—Courts engaged in the trial of cases or appeals under this Act shall be called "*Rent Suit Courts.*"

3. These Courts shall be presided over by the same officers as preside over the ordinary Civil Courts of the districts.

4. The Local Government may invest any officer serving under it with all or any of the powers of a Rent Suit Court.

5. These Courts shall be of the following grades:—

I.—The Munsif's Court.
II.—The Court of the Subordinate Judge.
III.—The Court of the District Judge.

Wherever there is an Assistant Judge, he shall hold the same powers as a Subordinate Judge; wherever there is an Additional Judge, he shall hold the same powers as a District Judge, but shall exercise them in such way as the District Judge shall direct.

6. All cases which are valued at not more than one thousand rupees shall be instituted in the Court of the Munsif, who would have jurisdiction to try a suit on title regarding the land. or other subject, which gives rise to the case under this Act.

7. All cases which are valued at more than one thousand rupees shall be instituted in the Court of the Subordinate Judge of the district.

8. When any doubt arises as to which of two or more Munsif's Courts, situated within the same district, a case should be instituted in. the District Judge shall decide the point. This decision shall be final. When any doubt arises as to which of two or more Munsifs' Courts, of which one or other shall be situated in different districts, a case should be instituted in, the Senior Judge connected with the conflicting districts shall decide in which Court the case shall be instituted. The same shall be the case with reference to a doubt as to the jurisdictions of two Subordinate Judges. Where the doubt shall relate to jurisdictions lying in different Presidencies, the High Court of Judicature at Fort William shall decide the matter.

9. No decision which shall have been passed in any case during the trial, of which no objection to the jurisdiction of the Court has been raised, shall be afterwards challenged by any one, or held invalid by any Court or officer, on the ground of defect of local jurisdiction.

10. The District Judge may of his own motion, or at the request of any party, transfer any case from the file of any Court, and may either try it himself or transfer it for trial to any subordinate Court of competent jurisdiction.

Explanation.—"Locality" is not to be considered with reference to the "competent jurisdiction" herein spoken of

11. *Of the valuation of cases.*—Where the relief sought consists of a sum of money, the valuation shall be the principal sum asked, exclusive of interest and other increments. A claim for ejectment shall be valued at ten years' rental of the land from which it is sought to eject a tenant. All other cases shall be valued according as the plaintiff shall think fit. Provided that it shall be the duty of every Court in which a case is instituted to satisfy itself that the case has been fairly and properly valued. If not satisfied as to the valuation made by the plaintiff, the Court shall fix the valuation. If within a reasonable time additional court-fee be not paid, the plaint or petition shall be rejected. The valuation thus made shall settle the pecuniary jurisdiction requisite for the trial of the case. If the valuation finally made by the Court exceeds its own pecuniary jurisdiction, the plaint or petition shall be endorsed accordingly with the valuation as settled by the Court, and shall be returned to the party for presentation in the proper Court If it appear to any Court exercising the powers of a Subordinate Judge that a case has been overvalued. it shall ascertain and record the correct valuation, and shall return the plaint or petition for presentation in the lowest Court which has jurisdiction.

12. The proper valuation of a case and the pecuniary jurisdiction of a Court to deal with it shall be finally regulated by the decision as to valuation, which may be arrived at under the last preceding section.

13. *Of court-fees.*—All court-fees shall be paid under the law in force for the time being regulating the amount payable and the mode of payment.

14 *Of parties to a suit.*—The parties to a suit are the plaintiff, the defendant, and any third party who shall intervene in the case, or be brought into it by order of the Court as having an interest in the subject-matter in suit, or for some other reason.

15. *Of how parties may appear.*—Parties may appear either personally or by some agent or representative specially or generally empowered by power of attorney to appear. Such agents or representatives must be possessed of personal knowledge of all matters connected with the case in which they appear. When such agent or representative is found not to have such knowledge, the Court may pass an order requiring the attendance of some other person who has such knowledge; and if no such person attends within a time to be allowed by the Court, the Court may proceed to pass final orders in the case.

16. An agent or representative, whether special or general, may do all acts, including the verification of plaints, written statements, petitions and the like, which the principal himself may do and which the power of attorney held may authorize.

Explanation.—An agent or representative may not delegate his powers by appointing another agent, but he may nominate and instruct vakils, or other law agents, for the conduct of a case.

17. A minor shall appear and act through his guardian, or next friend. A lunatic may appear and act through his Committee, or through any adult male relative whom the Court may admit to prosecute or to defend a case. The person who represents a minor or lunatic may appoint an agent under the provisions of the last preceding section.

18. *Of the institution and hearing of a suit.*—Every suit shall be commenced by a written plaint, which shall contain the following details:—

I.—The description of the Court in which the suit is brought.

II.—The name, father's name, and residence of the plaintiff.

III.—The name, father's name, and residence of the defendant.

IV.—The cause of action, the relief sought, the valuation of suit, and mode of calculation by which that valuation has been reached.

V.—If the suit relates to land, and the position and area thereof are essential, such description and definition of the same as shall suffice for its identification.

VI.—A verification in the following form:—"I A.B. [plaintiff or agent as the case may be] declare that I have made careful enquiry into the correctness of the above claim, and declare that to the best of my knowledge and belief it is a true and genuine one." [Signature.]

VII —The date of presentation to the Court.

19. As many copies (on plain paper) of each plaint shall be supplied to the Court as there are defendants. A copy of the plaint shall be served on each defendant, along with the summons to appear.

20. A Court may return a plaint for amendment and re-presentation (within a period to be fixed by the Court) on any of the following grounds:—

I.—That it is not in the prescribed form

II.—That the subject-matter of suit has been under-valued.

III.—That it is not accompanied by the proper number of copies.

IV.—That it is prolix, or obscure, or ambiguous.

V.—That the definition of land is insufficient for identification.

21. If amendment and representation be made within the time allowed by the Court, the plaint shall be held to have been filed on the day on which it was first presented to the Court. If compliance with the order of the Court be not made within the time, or the extended time, if any, allowed by the Court, the suit shall abate. Provided that a fresh suit may be brought in the same matter within the usual period for the limitation of suits.

22. Every plaint shall bear on the face of it a court-fee label equal in value to the sum required for service of summons on the defendant.

23 Every plaint, when admitted, shall be entered in a special register, which shall be in such form as the High Court of Judicature at Fort William shall from time to time prescribe: such register shall be called the "*Rent Suit Register.*"

24. Immediately after registration, a summons shall be issued to the defendant or defendants, together with a copy of the plaint, calling on him or on them to appear and answer to the plaint within such time, or on such date, as the summons may name. Such time or such date shall be intimated to the plaintiff, or to his agent, vakil, or mukhtar.

24A. The summons may be either for the purpose of final decision or of settlement of issues.

25. If the summons be for final decision, it shall require the defendant to bring his witnesses and documentary evidence himself, and shall further direct him, that if he is unable to do so, he shall apply for the necessary processes from the Court, in such time as shall admit of their being served within a reasonable time before the date fixed for final decision of the case.

26. If the summons be for settlement of issues, no summons shall be obtainable until after the said issues shall have been settled.

27. (*a*). If on the day fixed for hearing, either as originally fixed, or on adjournment granted, the plaintiff only appear, the Court shall take evidence as to service of summons on the defendants. If satisfied that the summons was served within a reasonable and proper time, it shall further proceed to hear the evidence of the claim in suit, and shall decide the case accordingly. If not satisfied that the summons has been so served, it shall pass such orders as seem just and proper.

(*b*). If on such day the plaintiff does not appear, but the defendant does appear, the case shall be dismissed with costs to the defendant.

(*c*). If on such day neither party appears, the case shall be dismissed.

Explanation.—In any of the above instances the Court may, if it thinks fit, adjourn the hearing to some future day, and pass such further orders for the conduct of the case as may appear to it reasonable and proper.

28. If the Court is sitting for the final disposal of the case, and the parties and their witnesses are in attendance, the Court shall call on the defendant to put in his defence, orally or in writing. If the defence is put in orally, the defendant (or his agent) shall be solemnly affirmed according to the law for the time being regulating the solemn affirming of witnesses, and his statement shall be recorded in the vernacular of the district by or under the direction of the Court. Any false statement made shall render the deponent liable to be dealt with under the provisions of chapter XI of the Indian Penal Code The Court shall then note the points which arise for decision in the case. It shall hear the oral evidence of the plaintiff and consider any relevant documentary evidence tendered. It shall hear the oral evidence of the defendant and consider any relevant documentary evidence tendered. It shall hear the plaintiff, or his agent, vakil, or mukhtar sum up his case. It shall hear the defendant, his agent, vakil, or mukhtar in reply. Thereafter it shall give judgment, either at that time or as soon as possible thereafter. It shall cause a decree to be at once prepared and made ready for execution.

29. If the Court is sitting for settlement of issues only, the defence shall be in the form of a verified written statement.

30. The Court shall consider the plaint, written answer, and any other materials placed at its disposal; and shall, if necessary, examine the plaintiff or the defendant or their agents orally concerning the matters in issue. From these materials the Court shall settle and record the issues or points for trial in the case, and shall fix convenient date for hearing evidence on the same.

31. On such date as so fixed, or on an adjournel date, if any, the Court shall take evidence and decide the case in the manner provided for taking evidence and deciding a case under section 28 of this Act.

32. It shall be incumbent on parties to use prompt diligence to enforce the attendance of witnesses, and procure the production of documents on the day fixed by the Court for proceeding with any matter. When the non-attendance of any witness or the non-production of any document, whether original or by certificate copy, is due to the laches of any party, no adjournment shall be claimable as of right by such party: nor shall an adjournment be granted, except on payment of substantial costs, which shall not be recoverable, whatever may be the result of the suit.

32A Every suit shall include the whole of the claim then due and recoverable. No second suit shall be brought on account of any part of a claim due and recoverable at the time of institution of a previous suit which has been omitted from such previous suit.

33. *Of incidents which may arise during the progress of a suit.*—A Court may allow a plaint to be amended at any stage; but not so as to alter the nature of the suit, or introduce an additional subject-matter of suit.

34. A Court may allow a written answer to be amended at any time, provided that the amendment shall bear strictly on what is necessary for a complete answer to the plaint as originally filed, or as amended.

35. A Court may allow a suit to be withdrawn at any state, with permission to bring another suit in the same matter, within the original period of limitation in any of the following circumstances:—

I.—Where some formal matter, which cannot conveniently be made the subject of an amendment, is found to be erroneous.

II.—When some part of the claim has been omitted from oversight or mistake of law.

III.—When, owing to insuperable difficulties, the plaintiff is unable to obtain some indispensable evidence.

Explanation.—The Court shall decide, on the facts before it, whether any evidence is 'indispensable,' and whether due endeavours have been made to procure it.

IV.—Whenever the Court is of opinion that it is for the interests of justice that such withdrawal shall be allowed.

36. If a plaintiff withdraws from a suit without such permission of the Court, he shall not be allowed to bring a fresh suit in the same matter.

37. If any third person shall appear and claim an interest in the subject-matter of a suit, whether as plaintiff or as defendant, the Court shall make such third person a party defendant to the suit. In like manner, if the defendant shall plead that any third person has an interest in the subject-matter of the suit, whether as plaintiff or as defendant, the Court shall make such person a party defendant. If the said party, after receiving "notice," shall attend, the questions in issue shall be decided in presence of all parties. If he shall fail to attend, he shall be bound by the proceedings conducted in his absence, in the same way as if he had attended.

38. If a plaintiff die, or become insane, or his property become vested in the Official Assignee, the case shall be stayed for a period not less than thirty days, from the date on which the death, insanity, or vesting shall become known to the Court. If during that period any one competent to represent the original plantiff shall appear and desire to conduct the case, he shall be admitted as plaintiff by substitution, and shall conduct all proceedings in the same manner as the original plaintiff might have done.

(*b*)—If any question arise as to the position of such applicant as insufficient to support his application, the Court shall enquire into the matter, and shall decide whether or not he shall be allowed to represent the state of the original plaintiff for the purposes of the suit. The decision given by any Court in this matter shall be final. The Court, before allowing any person to act under this section, may, if it thinks fit, take from him security for costs in case the suit be dismissed; and for the crediting of any money which may be realized under the decree to the estate of the original plaintiff.

39. If no such application be made within the period allowed, the suit shall be dismissed with costs. When a suit is dismissed under this section, it shall not admit of being revived, but a fresh suit in the same matter may be filed within the period of limitation applicable to the claim.

40 If a defendant die, or become insane, the case shall be stayed for not less than thirty days, from the date on which the death or the insanity of the defendant shall become known to the Court. If during that period the plaintiff shall apply for summons to be served on the representative of the original defendant, a summons shall issue accordingly, and the case shall proceed in his presence if he attend, or in his absence if he fail to attend.

(*b*)—If such representative appear and apply to be made a party to the suit, no summons shall be necessary.

(*c*)—If any dispute arise as to the representative character of any one who is summoned, or who appears, under this section, the Court shall summarily decide whether he shall represent the original defendant or not. The decision given by the Court in this matter shall be final

41. If no application be made within the period allowed, the case shall be dismissed, and shall not admit of being revived. But a first suit may be filed within the period of limitation applicable to the claim.

42. When any money shall have been paid under a decree, or any property has been delivered up under a decree to any one appointed by the Court under sections 38 and 40 of this Act, such payment or delivery shall be an absolute discharge of the debt or obligation as against all persons whomsoever.

43. *Of the mode of hearing and recording evidence, judgments, and decrees.*—Evidence shall be heard by the method of examination-in-chief, cross-examination, and re examination. No evidence shall be received contrary to the provisions of Act I of 1872, or of any other general law by which any evidence is excluded.

44. Evidence shall be recorded by the presiding officer with his own hand, and in the English language, if the said officer has sufficient knowledge of that language; otherwise it shall be recorded in the vernacular of the said officer. It shall not be necessary to record depositions word by word as given, but a memorandum of all relevant parts of depositions shall be made.

45. The judgment shall contain a statement of the facts of the case, of the points for decision, of the Court's decision thereon, of the reasons for such decision, and of the manner in which the case has been disposed of.

46. The decree shall contain the number and year of suit, as on the register of rent suits; a description of the Court and of the parties; a précis of the cause of action; the point or points on which the decision of the Court has been given; the decision of the Court on each point; and on the case, as a whole, an account showing the cost incurred and by whom payable.

47. *Of matters cognizable by Rent Suit Courts and of the effect of their judgments and decrees.*—No matter or question, the consideration or decision of which is by this Act declared to be within the cognizance of the Collector or other executive officer, shall be entertained by any Rent Suit Court.

48. In all other matters which arise out of the provisions of this Act, Rent Suit Courts shall have exclusive jurisdiction

49. When in any case under this Act there arises a question relating to title to land, or to some interest in land, as between parties having conflicting claims thereto, and it appears to the Court necessary to consider such question in order thereby to reach a just

decision of the ultimate issue or issues of a rent suit kind under trial, the Court shall make incidental enquiry into such question, and shall record the opinion at which it arrives on the same, and shall apply its conclusion thereon in aid of the decision of the issue or issues of a rent suit kind under trial.

50. No such opinion or conclusion shall form a binding decision on the question to which it relates, except in the suit in which it is passed, or in other suits similar to that suit to which it may be applicable; and any person who considers himself to be injured or aggrieved by the opinion or conclusion arrived at may bring a suit in the regular Civil Courts to decide the question of his title. Such suit may be brought within the time allowed by the general law of limitation of suits.

Explanation.—The date of dispossession of a plaintiff suing in a regular suit after an incidental decision against him by a Rent Suit Court is not necessarily, or probably, the date of that incidental decision. Such incidental decision shall not be held to constitute a cause of action from which a fresh period of limitation shall begin to run.

51. When two or more persons are known to be claiming a right to receive rent from the same tenant, the Court, having made all necessary persons parties to the suit, as provided in section 37 of this Act, shall try as between them the following issue, namely:—"*Which of the contending parties received and enjoyed the defendant's rent previous to the period of time embraced by the present suit*"? If it be decided that the plaintiff so received and enjoyed the defendant's rent (and the claim be otherwise established), the case shall be decreed. If it be decided that the third party so received and enjoyed that rent, the case shall be dismissed. Any person injured or aggrieved by the decision of this issue by a Rent Court may, subject to the general law of limitation of suits, bring a suit in a regular Civil Court for the establishment of his right and title as claimed.

52. Rent Suit Courts shall not enter upon an incidental trial of title, nor shall it try the issue prescribed in the last preceding section, if any of the following circumstances are applicable:—

(*i*)—When any party produces a decree of Court (in which execution shall have been had, if the terms of the decree render execution necessary for the enjoyment of its result) showing that such question or such issue has been expressly, or by necessary implication, decided in favour of any party who produces it.

(*ii*)—When any party produces a decree of Court (in which execution shall, if necessary, have been taken out) passed under the provisions of Act XIX of 1841, or of section 9 of Act I of 1877.

(*iii*)—When any party produces an order in his favour passed under Chapter XII of the Code of Criminal Procedure.

(*iv*)—When any party has been registered as proprietor under the provisions of Act VII of 1876, Bengal Council.

and the said Court shall give effect to these as "conclusive proof" (within the meaning of section 4 of Act I of 1872) that the party in whose favour the decree, order, or registration has been made is entitled to the rent claimed in the case under trial, and the Court shall decree or dismiss the case accordingly.

53. When a decree for rent shall have been passed against any tenant in favour of any plaintiff, no second decree for the same rent shall, under any circumstances whatever, be passed against the same tenant or his representative.

54 Except where otherwise specially provided for in this Act every question arising under the provisions of this Act, which shall be decided in the course of any trial by a Rent Suit Court, the decision thereof being expressed in a decree, shall be "*res judicata,*" and shall be binding *inter partis* so long as no change of circumstances shall be proved to have taken place.

Examples.—

(*i*)—It is declared in a decree, dated 1885, that A is B's tenant. This is '*res judicata*' as between A and B, and will be binding with respect to 1886, and onwards, unless it is proved that circumstances have changed.

(*ii*)—A sues B for rent in 1885; C intervenes. It is found and declared in a decree that B is the tenant of C, and A's suit is therefore dismissed. This decree is '*res judicata*,' and bars A from suing B for rent of 1886, unless A can show that circumstances have changed.

(*iii*)—A Rent Suit Court finds and declares by its decree, as one of the issues decided in the case, that A's tenancy extends to 12 beeghas, as alleged by him, and is not limited to 5 beeghas, as alleged by the plaintiff. This decision cannot be questioned by suit in the regular Civil Courts, and is binding as between A and the plaintiff, so long as it is not proved that circumstances have changed.

55. No issue decided by any Rent Suit Court, the decision whereof shall appear in that Court's decree, shall be challenged or not given effect to by any other Court on the ground that that other Court is of opinion that the said issue was not a necessary one to be heard and determined in the rent suit in which it was passed.

56 Nothing contained merely in a judgment, and not reproduced specifically in the decree, shall be held to be "*res judicata.*" But a judgment may be referred to in order to settle the meaning of a decree, if that meaning be doubtful.

57. *Of applications.*—In disposing of applications the Courts shall follow the procedure laid down for the disposal of suits, in so far as the same shall be applicable In any instance in which that procedure is held to be inapplicable, the Court shall deal with application under the provisions of section 169 of this Act.

58. *Of the execution of decrees.*—Application to execute a decree shall be made to the Court which passed the decree as a Court of first instance.

59. On the application of the decree-holder, a decree may be sent for execution to any other Court. The fact of signing an order transferring a decree shall, in the Court to which the decree is transferred for execution, be conclusive proof (within the meaning of section 4 of Act I of 1872) that the decree admitted of being executed on the date on which the order is signed to the extent named in the transmitted decree, and against the person named as then being the judgment-debtor.

60. Before transmitting a decree to another Court for execution, the judgment-debtor shall be allowed an opportunity of showing cause against the proposed transfer.

61. No Court to which a transfer is made shall take cognizance of any objection to execution which might have been made previous to transfer; but it may allow time to the applicant within which to apply to the transmitting Court to review, or recal, or modify its order of transference, and such Court shall have power to review, recal, or modify its order of transference.

62. The Court to which any decree is sent for execution shall take cognizance of all objections which relate to matters which have come into existence on or subsequent to the date on which the order of transfer was passed.

Illustrations.—

(*i*)—A judgment-debtor objects in the Court to which a transfer has been made that execution was barred by limitation ten days before the date of the order of transfer. The Court shall not entertain this objection, but may give time in which the objection may be made in the transfering Court.

(*ii*)—A judgment-debtor objects that the decree became barred while the papers were in course of transmission from Court to Court. The Court to which the decree has been sent shall dispose of this objection.

63. A petition for execution shall set forth:—

(*i*)—The name, father's name, and residence of the decree-holder and of the judgment-debtor.

(*ii*)—The number and date of decree to be executed, and of the Court which passed it, together with details of a like kind regarding the Appellate Court or Courts, if the case has been the subject of an appeal.

(*iii*)—The substance of the decree to be executed.

(*iv*)—The amount of money (if any) for which executed is by the present petition asked. If the execution be not for money, then the valuation of the subject-matter to which the present execution is directed.

(*v*)—The mode of attachment sought, together with details of property (if any) to be attached.

64. If a petition for execution be filed during the pending of an appeal in the case in which execution is sought, the petitioner shall state this fact in his petition; and the Court shall refer the petition for the orders of the Court before which the appeal is pending. The lower Court shall be bound to obey any directions which may issue from such Appellate Court.

65. If application for execution be against any other person than the original judgment-debtor, or if application for execution be made more than one year from the date of the decree, or from the date of the last preceding application for execution, the Court shall issue a notice to the person against whom the application is made, calling on him to show cause, within a specified time, why execution should not issue against him. If no cause be shown, execution shall proceed. If cause be shown, the Court shall deal with the matter as the facts set forth require; and shall allow or disallow the execution according as the result of its enquiry may show to be just and proper.

66. The following modes of execution shall be lawful:—

I.—Against the person.
II.—Against moveable property.
III.—Against immoveable property.

Explanation.—Moveable and immoveable property, in order to be subject of execution, must be either the original property of the judgment-debtor or must be assets or property of the judgment-debtor in the hands of an heir, successor, or representative.

67. Execution against the person shall not issue against any one except the actual judgment-debtor, nor against any minor or female. It shall not issue against the judgment-debtor unless the decree-holder shall satisfy the Court that the judgment-debtor is possessed

of property which he is concealing, nor unless the judgment-debtor shall have had an opportunity of showing cause against execution issuing against his person.

68. Where a person is ordered to be imprisoned in execution of a decree, the following scale shall apply. If the debt, including all interest and costs, do no exceed fifty rupees, six weeks; if the same do not exceed one hundred rupees, three months; if the same do not exceed two hundred rupees, four months; in any other case, six months.

69. All moveable property as defined in the "*Explanation*" at section 66 shall be liable to be taken in execution, except the following articles:—Necessary clothing, implements of trade: in case of cultivating tenants, such cattle and implements of husbandry as the Court may consider necessary for the cultivation of the lands; one-half of any periodic salary drawn by any person, whether from Government, from any company, or from any private persons; books or papers of accounts appertaining to any business, the title deeds of any immoveable property.

Explanation.—All produce of the soil which admits of being severed therefrom (as trees, crops, vegetables) are for the purposes of this section to be considered moveable property; also all buildings which are not built on a foundation of fire-burnt bricks or stone.

70. Execution against moveable property shall be by actual seizure whenever the nature of the moveable property admits of seizure. In case of moveable property which does not admit of seizure, attachment shall be made by such method as the Court in each cases shall direct.

Illustration.—The following are examples of moveable property liable to attachment, but not admitting of attachment by seizure.

(*a*)—The half of any salary.
(*b*)—A debt due from a stranger to the judgment-debtor.
(*c*)—Dividends due or about to fall due.
(*d*)—Malikana.
(*e*)—A decree.

71. Immoveable property shall be attached by public notification setting forth the fact.

72. Such notification shall be published in the following ways:—

(*i*)—By being hung up in the court-house which directs the attachment.
(*ii*)—By being published by beat of drum, on or as near as possible to the property itself.
(*iii*)—By being fastened up to the nearest thana, chowki, or other public building in the neighbourhood of the property.

73. As soon as convenient after any moveable property has been seized, the same shall be sold either at the place of seizure or elsewhere as the Court, acting in the interests of the judgment-debtor, shall direct. When the attachment has been made otherwise than by seizure, the Court shall proceed to transfer the ownership to the decree-holder by such means as shall be most suitable in each instance.

74. As soon as convenient after any immoveable property has been attached, a date for the public sale of the same shall be fixed, which shall be not less than thirty days from the date on which the proclamation of sale shall have been published as hereinafter provided.

74A. The "sale notification" shall contain full particulars of the parties to the case, and of the subject-matter of suit in which the decree was passed: it shall state, as accurately as possible, the property which is to be sold, together with any known encumbrances there of such a kind that they will not be affected by the sale, and the date and place of sale. The sale notification shall be published in the same manner as is provided in section 72 of this Act for the publication of a notice of attachment of immoveable property.

74B. On the day appointed for sale, and at the place named in the same notification, the property shall be put up for public competition at auction, by the nazir of the Court, or by such other officer as the Court may appoint for this purpose.

75. Unless the Court be of opinion that the price offered is greatly under the value of the property exposed for sale, the property shall be sold to the highest bidder. He shall pay then and there 25 per cent. of the purchase-money. If he fails to do so, the property shall be put up again for sale then and there, and the defaulting first purchaser shall be liable to make good any deficiency in price between the first sale and the second. The balance of the purchase-money shall be tendered to the Court within ten days of the date on which the auction sale was held. If default is made herein, the sale shall be null and void, and the deposit shall be forfeited. After deducting Government dues on the sale, the balance of such deposit shall be applied to liquidate, in whole or in part, the judgment-debt; and if any surplus remain, it shall be paid over to the judgment-debtor.

76. If the date of any sale is postponed *de die in diem* on account of the number of sales to be held, or other sufficient reason, no fresh notifications shall be necessary before the sale is held when its turn comes on.

77. If the sale is postponed by order of the Court on account of insufficiency of bid, or if it is postponed on any other account, otherwise than *de die in diem*, proceedings shall re-commence with issue of a fresh sale notification, and be continued as before.

78. No sale shall be postponed more than once by order of any Court on the ground of inadequacy of bid.

79. The sale proceeds of a completed sale shall be dealt with in the manner already laid down with reference to the dealing with the deposit of 25 per cent. in section 75 of this Act.

80. The person who makes the final bid at an auction-sale shall certify to the officer conducting the sale the true name of the actual beneficiary purchaser. No other person shall thereafter be allowed to allege in any Court of Justice, or before any public officer, that the purchase was on his account, or for his benefit, *benami* or *farzi*. In case of a fraudulent purchase by an agent employed to buy and disclose the name of his principal, such principal shall have an action for damages against his fraudulent agent in the ordinary Civil Courts, but the sale or the ownership under the sale shall not be disturbed.

81. *Of execution in ejectment.*—Execution in ejectment shall be made by actual removal of the person who is to be ejected, and by actual installation of the person in whose favour the decree for ejectment has been passed.

82. *Of giving possession after auction-sale and of certificate of execution.*—The purchase of immoveable property at an auction shall, as soon thereafter as he applies for the purpose to the Court, be put into possession and actual enjoyment of the property purchased. The Court thus giving possession shall adapt its proceedings to the nature of the possession obtainable. If such possession actual occupation of the property, the Court shall by force, if necessary, remove from the property the judgment-debtor, or any person holding for him, or on his behalf. If any person against whom possession has been thus given under this section, or under section 81 of this Act, shall re-enter upon the land, he shall be deemed to have committed an offence as defined in chapter XIV, sections 441, 442, 443, 444, 445, or 446, as may be applicable to the facts.

83. Thirty days after possession of any immoveable property has been given in an execution for ejectment, or under the provisions of section 81 of this Act, the Court shall, on application made to it, deliver to decree-holder on ejectment, or to the auction-purchaser, as the case may be, a "*certificate of execution*" setting forth the details of the property acquired by such execution in ejectment or sale. Such "certificate of execution" shall be the title deed of the holder thereof. Provided that no such certificate shall be delivered until all questions arising out of execution proceedings shall have been disposed of by the Court, provided, further, that no certificate shall be granted to any one until he shall have got actual possession of what he has purchased, according to the nature of the possession applicable to each subject.

84. The functions of a Court executing a decree shall end when the holder of a decree in ejectment or the purchaser of immoveable property has received from the Court a "certificate of execution"; or the Court shall have decided in favour of some third person that the decree of ejectment or the purchase is invalid as against such third person.

85. *Of claims which may arise during the course of execution proceedings.*—All questions which arise in the course of execution proceedings between the parties thereto, and relating to the said execution, shall be disposed of by the Court executing, and not by a separate suit. Subject to the right of appeal, when that exists, all questions relating to the execution of a suit decided by any Rent Suit Court between the parties to the decree or their representatives shall be final, and shall not be further contested by a regular suit.

86. When any third party shall appear and claim an interest in any property which has been attached or sold in execution, the Court executing shall enquire into such claim: and on the evidence adduced by both sides shall decide the matter in issue. Subject to appeal, when that right exists, such decision shall be final; but the unsuccessful party may bring a suit in the regular Civil Court to enforce his right as against the other.

Illustrations.—

I.—A attaches Z as the mouzah of his judgment-debtor B; C claims the mouzah as his. The Rent Suit Court enquires into this claim; finds in favour of C, and dissolves the attachment, or declares the sale invalid; and dismisses the execution. A may bring a regular suit to have it declared that Z belongs to B, and is, as such, liable to attachment and sale in execution of the decree held by A against B. Such suit, if successful, shall be binding on the Rent Suit Court, which shall rescind its order dismissing the execution, and shall conduct the proceedings to a close.

II.—A attaches 20 buffaloes as the property of B, his judgment-debtor; C intervenes, claiming them as his: the claim is dismissed. C may sue as in illustration I and may recover the 20 buffaloes or their value from A. A, unless barred by limitation, may, after satisfaction of Court's decree, take out fresh execution against B.

87. At any time before grant of a "certificate of execution," a Court may set aside the proceedings on being satisfied that there has been a material irregularity therein, which has probably caused loss to the judgment-debtor.

88. If in consequence of any fraud or contrivance, or if by any other cause, the property of a third person has been sold in execution for the debt of another, under circumstances such that the third person had no opportunity of applying for redress to the Court executing before issue of the "certificate of execution," such person may bring a suit in the regular Civil Court within three years from the date on which such fraud or contrivance shall have become known to him, or such other cause has ceased to be applicable. Provided that no such suit shall be brought after twelve years have elapsed from the date on which the certificate of execution was signed.

Illustration.—Absence from the locality is "another cause."

89. *Of settlement of decrees by proceedings out of Court.*—No settlement of a decree, whether in whole or in part, made out of Court shall be recognized by any Court unless the transaction be intimated to the Court.

90. If such intimation be made by the decree-holder, the same shall be received and filed with the record in proof of satisfaction admitted.

91. If such intimation be made by the judgment-debtor, notice shall issue to the decree-holder to show cause within a specified time why the amount should not be credited to the decree. If no cause be shown, the amount shall be so credited. If cause be shown, the matter shall be tried by the Court, and a decree passed in the matter.

92. No alteration in the terms of a decree made between the parties out of Court shall be of any avail, unless the same be intimated to the Court, and the decree be modified by the Court in accordance therewith. Thereafter the record of alteration shall cease to be of any effect, and the decree as modified shall alone form the record of the debt. Provided that, if an alteration as proposed by the parties appear to the Court to be vague, unjust, contrary to law, or so worded as to be likely to give rise to difficulties in future, the Court shall refuse to admit the said alteration, and the decree as originally drawn shall remain the only record of debt as between the parties. No suit shall be maintained or execution taken out on any record of alteration of a decree as drawn up by the parties thereto, whether the same shall have been intimated to the Court.

93. *General.*—A decree may, in the discretion of the Court, direct payment by instalments.

94. Any person whatever may pay money into Court in full or in partial satisfaction of the same; and the decree-holder shall be bound to accept such payment in full or in partial satisfaction of the decree as the case may be.

95. When a tenant is ejected from his holding on account of a breach of any covenant in his lease, he shall be entitled to compensation for any improvements which he has made, not being in breach of any convenant of his lease. A tenant ejected for non-payment of rent shall not be entitled to receive compensation for any improvements.

96. When a tenancy is brought to sale in satisfaction of a decree by a landlord, the sale shall have the effect of avoiding all encumbrances thereon which had been created by the tenant since he, or his predecessors in interest, came into possession, otherwise than with the written consent of the landlord.

97. When a tenancy is brought to sale in satisfaction of a decree by a decree-holder who is not the landlord, the property shall be sold with all existing and *bonâ fide* incumbrances attaching to it. Provided that the purchaser may bring a suit in the regular Civil Courts to set aside any incumbrance which he may allege to be fraudulent, fictitious, or "benami" for the judgment-debtor.

98. A decree may be sold or otherwise transferred. Provided that the judgment-debtor shall have the same equities and relief against the purchaser or transferee as he would have had against the original decree-holder.

Illustration.—"A set-off" available against a decree-holder shall be available against a purchaser or transferee.

99. *Of first appeals.*—Unless specially prohibited by this Act, an appeal shall lie from every decree recorded under this Act. An appeal from an "order" shall lie only when specially allowed by this Act.

Explanation.—A decree here means the final order of any Court by which any suit, application, or matter pending before it is decided. The fact that the case may be revived, reviewed, or appealed against shall not be considered as affecting the "finality" of a decree.

100. An appeal may be brought with respect to anything expressed in a decree, or with respect to anything erroneously omitted from a decree. Provided that no appeal shall be brought with respect to any omission from a decree, unless the appellant shall have first moved the Court which passed the decree to supply the alleged omission, and the same has been refused.

101. Any party to a case may bring an appeal; and if any one party brings an appeal, any other party may file a cross-appeal.

102. A party in whose favour the ultimate order of a decree has been given may, nevertheless, appeal from any part of the decree which is adverse to his interests.

Illustration.—A sues B for rent; B, admitting the tenancy pleads payment; C intervenes, claiming to be tenant on the land. The Court, having taken incidental cognizance of the conflicting claims to this tenancy, dismisses the suit, declaring that B is not tenant of the land. B may appeal.

103. The right to bring an appeal under this Act, as also the Court in which an appeal shall be filed, shall depend solely on the valuation of the case as finally sealed by the Court before which the case against which the appeal is brought was instituted.

104. When the valuation, as there ascertained, shall exceed Rs. 5,000 the first appeal shall in all cases lie direct to the High Court of Judicature at Fort William.

105. When the valuation, as there ascertained, shall be Rs. 5,000 or less, the first appeal shall lie to the Court of the District Judge.

106. The Local Government may by any general or special order invest any officers exercising any of the powers of a Rent Suit Court with power to hear and decide cases under the Act. up to a specified money valuation, without any right of appeal to the parties whatever. Whenever the Local Government shall exercise its powers under this section, no appeal shall lie to any Court from any decree passed by a duly invested officer with respect to any case whose valuation as settled by the Court before which the case is instituted shall not exceed the sum to which by its order the Local Government shall have declared that jurisdiction without appeal shall extend.

107. Unless otherwise specially provided, no appeal shall lie from any order which by any part of this Act is described as "*final*," either at the time of passing it, or after record of decree; nor shall any argument in appeal be heard to the effect that such order is erroneous.

108. No appeal shall lie from any order passed during the currency of a case, so long as the case is pending. But such order, if embodied in a decree, may be made the subject of appeal after decree; or may be brought forward in argument in order to show that the decree is erroneous, inasmuch as it is affected by an erroneous order.

109. No appeal shall lie from a case which has been dismissed in consequence of the absence of the plaintiff, or decreed against a defendant who fails to attend at the trial. But in either instance the absent party may apply to the original Court to reinstate the case; and that Court shall reinstate it accordingly, if it is satisfied that the application has been made within a reasonable time, and that there is good and sufficient cause for reinstating it.

110. There shall be no appeal from an order reinstating the case.

111. An appeal shall lie from an order passed refusing to reinstate a case, unless passed by an officer exercising powers under section 106 of this Act, with respect to a case valued at not more than the valuation up to which his decisions are not subject to appeal.

112. All orders passed in execution of a decree after attachment has issued, or after seizure of moveable property has been made, whether these be passed between the parties to the decree, or on the intervention of a third party, may be at once carried on appeal. The Court to which such appeal shall be carried shall be ascertained from the valuation of the proceedings in execution.

Illustrations.—

I.—The decree is for Rs. 5,100: the execution is for the same sum: The appeal shall lie to the High Court.

II.—The decree is for Rs. 5,100: the execution is for Rs. 5,000: the appeal lies to the District Judge.

113. Unless otherwise specially provided for in this Act, a Court executing a decree shall not stay its proceedings merely because an appeal against a decree or order has been filed.

114. In any case in which no appeal is allowed (save and except in case of an officer acting under the special jurisdiction conferable under section 106 of this Act), the District Judge may, after a decree has been passed, and at the instance of any party, call for a record, and may, after hearing parties, or such of the parties as may, in answer to notice, appear, correct any error of law or procedure which the Court of first instance has fallen into.

115. An appeal from the decree or order of an officer holding the powers of a Munsif may be heard by the District Judge; or, on his order thereon passed, by an Additional Judge, an Assistant Judge, or a Subordinate Judge.

116. An appeal from the decree or order of an officer holding the powers of a Subordinate Judge shall be heard by the Judge; or, on his order thereon passed, by an Additional Judge.

117. An appeal from a decree or order of an Assistant Judge shall be heard by the District Judge only.

118. An appeal from a decree or order of the District Judge, or of an Additional Judge, shall lie to the High Court of Judicature at Fort William.

Illustration.—A District Judge transfers to his own file and tries as a Court of first instance a suit for Rs. 500 arrears of rent, and appeal shall lie to the High Court.

119. *Of the institution and hearing of first appeals*—Appeals shall be presented in the form of written memorandum, setting forth concisely and without argument the errors alleged to have been committed by the lower Court.

120. An Appellate Court shall test the valuation of every appeal filed, and if it finds that the appeal has been so overvalued as to have resulted in the filing of the same in a higher Court than the proper one, it shall return the memorandum of appeal for presentation in the proper Court.

Illustration.—The original suit (not on appeal) was valued at Rs. 6,000. The valuation of the matter in execution (now on appeal) is Rs. 5,000. The appeal is brought in the High Court. That Court shall return the memorandum for presentation in the Court of the District Judge.

121. The Appellate Court may reject the appeal if, after hearing the appellant or his Pleader, it sees no reason to think that no error of law or of procedure, which has caused prejudice to the appellant, has been committed by the lower Court.

Explanation.—The rejection of an appeal under this section shall have the effect of an affirming of the decree of the lower Court.

122. If an appeal be admitted, the Appellate Court shall fix a day for hearing, and shall cause the appeal to be registered in a separate register of rent suit appeals, and shall call for the record from the lower Court. It shall cause notice of the date of hearing to be served on the opposite side, requiring attendance to be put in in such time as shall admit of the appeal being heard on the day appointed for hearing.

123. On the day appointed for hearing, or on such other day, if any, as the hearing may be adjourned unto, the Court shall consider the record, or such parts thereof as the parties may consider relevant to the appeal. It shall hear the appellant or his pleader in support of the grounds taken in the memorandum of appeal, and the respondent or his pleader in support of the decree of the Lower Court. The appellant or his pleader shall have a right of reply. If there be a cross-appeal, or more appeals than one from the same decree, they shall be amalgamated and heard together, parties being then ranged as nearly as possible in the same order as they stood in the Court below, and they shall be heard in such order as plaintiff-appellant, defendant-appellant, third party appellant. In such case, there shall be no right of reply.

124. With the special permission of the Court (which shall be formally recorded), but not otherwise, an appellant may be heard on grounds not taken in the memorandum of appeal, and the Court may decide the case on such grounds. Provided that the opposing side shall have had fair and proper opportunity to meet them The Court shall not decide an appeal on any ground which shall not have been laid by the parties before the Court, or shall not have been stated by the Court for the consideration of the parties, or their Pleaders at the hearing.

125. After hearing all parties present or their pleaders, the Court may do one or other of the following things :—

I.—It may affirm the decree of the Court below.

II.—It may reverse that decree.

III.—It may vary that decree.

In case the Appellate Court reverses or varies a decree of the lower Court, the said Appellate Court shall record a new decree stating what its decision in the matter in litigation is.

IV.—If the Lower Court has recorded evidence, but on disposing of the case on some preliminary point has not recorded its opinion on the evidence as it bears on the other points, the Appellate Court, if it differs from the first Court regarding such preliminary point, may remit the record to the Lower Court for an expression of its opinion on the other parts of the evidence, and for return thereafter to the Appellate Court for disposal of the appeal.

V.—It may call for additional evidence on any point or points on which, in its opinion, the lower Court has not received proper evidence.

VI.—It may prescribe for trial any issue or issues which seem to the Appellate Court to be essential to the proper decision of the case, and may require the lower Court to try the said issues and re-transmit the case, together with the evidence as taken, to the Appellate Court for disposal of the appeal.

126 When an Appellate Court acts under clauses IV, V, or VI of the last preceding section, it shall retain the appeal as a pending matter on its own file, and shall, as soon as its orders have been carried out by the lower Court, hear argument, if any is offered upon the mode in which the said orders have been carried out, and upon the result thereof. After hearing such argument, if any, the Court shall dispose of the appeal.

127. Instead of remitting a case to the lower Court, the Appellate Court may itself record any additional evidence, either on the old or on fresh issues and so dispose of the case.

128. *Of the judgment and decree on first appeal.*—When no second appeal is allowed, and when the Appellate Court affirms the decree of the Court of first instance, a decree dismissing the appeal is all that the Court of Appeal need record.

129. When a second appeal is allowed, or when the Appellate Court varies or reverses the decree of the Court of first instance, the judgment of the Court shall contain a statement of the points which have arisen for decision on appeal, and of its decision thereon, together with a brief statement of the principal items of evidence on which its decision is based.

130. When an Appellate Court affirms a decree of a Court of first instance, no fresh formal decree need be drawn up, but a memorandum of costs incurred in the Appellate Court shall be transmitted to the Lower Court, and the amount shall be incorporated with the decree of that Court.

131. When an Appellate Court varies or reverses the decree of a Court of first instance, it shall prepare a fresh decree, applicable to the whole case, both in the Court below and in the Appellate Court; and this fresh decree shall be the decree in the case in supersession of the decree of the lower Court.

131A. *Of second appeals.*—Second appeals shall lie to the High Court of Judicature at Fort William from decisions of Courts of first appeal. Provided that no second appeal shall lie from any decree of a Court of first appeal in which the valuation of the appeal in such Court of first appeal shall have been Rs. 500 or under.

132. A second appeal shall lie only on one or other of the following grounds :—

I.—That the decree is contrary to some specified law, or usage which has the force of law.

II.—That the lower Appellate Court has failed to determine some material issue on which its decision was sought when the appeal was before it.

III.—That a substantial error or defect in the procedure as prescribed in this Act has been committed by the lower Appellate Court, and that such error has caused actual error or defect in the decree.

133. The Court of second appeal may affirm, vary, or reverse the decree of the first Appellate Court on any of the grounds stated in the last preceding section. Before passing final orders in the appeal, the Court of second appeal may require the Court of first appeal to take additional evidence on any point which has been tried; or to try and record findings of fact on any fresh points stated and sent for this purpose to the lower Appellate Court. The lower Appellate Court shall carry out such orders, as speedily as possible, and shall communicate the result to the Court of second appeal, which shall thereafter proceed to pass final orders on the appeal before it.

134. The judgment and decree of the Court of second appeal shall be in such form as the said Court shall think fit to adopt.

135. *General.*—The provisions of this Act relating to the general powers enjoyed by Courts of first instance and their procedure in special circumstances shall, in so far as the same can be made applicable to Courts of appeal, be held to apply to them.

Illustrations.—

I.—The rules relating to procedure in case of absence of any necessary party to a case shall apply when any party to an appeal is absent.

II.—The procedure to be followed by Courts of first instance, in case of the death, &c, of a party to a case shall be followed in similar circumstances by an Appellate Court.

III.—An Appellate Court may allow a plaint or a memorandum of appeal to be amended or withdrawn.

Provided that an Appellate Court shall not allow any third party to intervene at the appellate stage

136. Any Court may grant a review of its own decree, provided application be made within such time, not exceeding three months from date thereof, as the Court shall deem reasonable on any of the following grounds:—

I.—The discovery of fresh evidence, which with due diligence could not have been forthcoming at the trial.

II.—A mistake or error, other than a mere clerical error, which has resulted in an error in the decree.

Explanation.—A mere clerical error may be corrected by the Court at any time, with or without previous notice to the parties.

III —That the ends of justice require that a review be granted

137. No "review" shall be granted on any matter regarding which there was a right of appeal, of which the petitioner for "review" did not avail himself.

138. A review shall not be granted by the successor in office of the officer who passed the original decree But if on the succession taking place any petition of review has been actually admitted, the successor shall have power to hear and dispose of the matter.

139. The procedure in admitting and hearing a petition of review, and in reviewing a decree if the petition be admitted, shall conform, as far as possible, to the procedure laid down to regulate the procedure of Courts of first appeal.

140. If in any case or appeal under this law in which there is no appeal, or no second appeal, the Court dealing with such case or appeal shall entertain any reasonable doubt as to any part of the case, concerning any question of law, or usage which has the force of law, or the construction of a document, or the proper procedure applicable to the matter in hand, the Court may either of its own motion, or at the request of any party, draw up a statement of facts of the case, and of the point or points on which doubt is entertained; and shall submit the same for the instructions of the Appellate Court to which the referring Court is immediately subordinate.

141. Proceedings in the referring Court shall be staying pending receipt of the instructions of the Appellate Court in the matter referred to it.

142. The Appellate Court, in dealing with a reference under section 140, shall give parties an opportunity of arguing the matter before it; and shall, after such argument, or without argument if no argument is offered, decide the point referred to it; and shall transmit a copy of its decision for the guidance of the referring Court.

143. If the reference be to the Court of the District Judge, and he entertains reasonable doubt as to the answer which should be returned to the referring Court, he may, if he thinks fit, forward the reference for disposal by the High Court of Judicature at Fort William, with any remarks which he may think fit to make.

144. *Of summons and notice.*—A "summons" means a written order served on a defendant or on a respondent requiring him to answer to a case or appeal against him; or an order on a witness requiring him to attend, or to produce a document, book, or the like.

145. A "notice" means a written order served on any one requiring him to do or not to do some act, or conveying to him some information.

146. Summons and notices shall be served as follows:—

147. A single peon of the Court shall carry two copies to the place where the person on whom service is to be made resides.

148. The person to be served or, if he cannot be found, his house shall be pointed out to the peon by a person who shall be deputed for that purpose by the person at whose instance the summons or notice was issued.

149. Service shall be made in one or other of the following ways:—

I.—If possible, by delivery of one copy to the person named therein.

II.—If that be not possible, then by delivery of one copy to any adult male member of the family who lives on the same premises, or in the same village.

III.—If that be not possible, then by attaching one copy to the house-door of the person named therein.

150. If service be made under clauses (I) or (II), the serving peon shall, if possible, obtain the signature or mark of the person on whom service is made. If such signature be refused, or if service be made under clause (III), the receipt of the putwari or village watchman, or substantial resident, shall be obtained to a certificate of mode of service to be drawn up on the spot by the peon on one copy of the summons or notice. If the said signatures or marks shall be granted on service made under clauses I or II, these shall be formally "witnessed" by the putwari, village watchman, or substantial resident.

151. If a person on whom a summons or notice has been served in any of the above ways fails to attend or to comply with any order issued, the Court many issue a warrant for his arrest On his being brought before the Court, he shall be admitted to bail (if bail be forthcoming) for attendance on the day fixed for the case. If he is unable to find bail, he shall be detained until the day fixed for the case in the 'under-trial' ward of the nearest jail or lock-up.

152. On returning from an attempt to serve any summons or notice, the peon and the deputed agent of the party shall make affidavit of what occurred at the time of service, or attempt to serve. Such affidavits shall be recorded on the back of the second copy of the summons or notice, which shall then be filed in the record of the case or appeal. Such affidavits shall be received as evidence of what they state, and the statement shall be held to be true, unless rebutted by other evidence produced by any one who alleges the statements to be untrue.

153. If a summons or notice cannot be served in any of the ways prescribed in section 149, and if, on warrant being issued, the absent person cannot be found, the Court may then, at the instance of the party, proceed by proclamation and attachment and sale of the moveable or immoveable property of the absentee.

154. If as the result of these proceedings the absentee shall appear and shall give a true and sufficient reason for not appearing, or complying, at earlier date, the Court shall pass such order regarding the property or the proceeds thereof as may be just and proper. Attachment and sale of property under section 153 shall be conducted under the procedure prescribed for execution of decrees. Provided that no sale of immoveable property shall become final until one full year after it has been held and completed. A sale of moveable property shall become final at once, but the sale proceeds shall be at the disposal of the Court for one year from date of sale.

155. A case shall not be kept pending in any Court because of the absence of any witness or witnesses, unless the Court shall be of opinion that the party who professes to require him or them will be materially prejudiced by the case proceeding in the absence of such witness or witnesses.

156. *Miscellaneous.*—Every person who requires any summons or notice to issue from any Court, or any notification, shall pay (in addition to process fees) all costs likely to be incurred in connection with the process, and these must be paid before process issues from the Court. Any want of diligence or any neglect in this matter shall result in the process not being issued, or not being issued in proper time, in which case no second process in the same matter shall be obtainable as a matter of right.

Illustrations.—

I.—A takes out summons on a witness; he must deposit at the same time travelling and diet expenses at such rate as the Court, by any general or special order, may direct.

II.—A applies for attachment of ten head of cattle in execution of a decree. He must, at the time, deposit costs of tending and feeding the cattle after attachment and before sale.

157. When summons or notice is served under clause I or II of section, no witness or other person shall be bound to comply with the orders of the Court, unless proper travelling and diet expenses are at the same time tendered. No witness or other person shall be required to remain in attendance at Court *de die in diem* after his diet allowance shall be exhausted; unless the same be at once replenished. No witness or other person who shall be sent away to his home unheard shall be required to attend again on some other day unless fresh travelling expenses be provided for him.

158. All persons on whom any summons, notice, or notification of Court shall have been duly served, whether personally or otherwise, shall be bound to obey the same according to the tenor and purport thereof: and, except in the circumstances stated in section 157, shall be bound to remain present at the Court until the presiding officer of the Court permits them to leave.

159. *Miscellaneous.*—Any person sued under this Act on account of any money due may plead set-off, provided:—

I.—That the set-off shall be a sum then ascertained and nameable without trial by the Court as to the amount thereof.

II.—That the set-off is due in the same contractual relation between the parties as they stand in with reference to the suit.

Illustrations.—

I.—A is sued for rent of 1885. He pleads set-off in that he paid Rs 50 excess rent for 1884. This plea shall be enquired into, and, if found true, shall be allowed.

II.—A is sued for rent. He pleads that the plaintiff owes him money for a horse sold by A to the plaintiff on credit. This plea shall not be received.

III.—A is sued for rent for 1885. He pleads that the plaintiff promised to pay to him whatever sum might be realized from a certain right of fishing in tanks. This plea shall not be received.

160. Whenever a Court disposes of any matter, it shall pass reasonable and proper order as to the costs incurred in the suit, and shall say by whom they are to be paid.

161. Whenever a Court disposes of any matter, it shall pass orders allowing or disallowing interest. It shall ordinarily allow 12 per cent. per annum, and on debts down to the date of institution of suit. On sums which shall be due after that date, including costs of the suit, the Court shall ordinarily allow 6 per cent. per annum. Provided that, if the rate of interest payable shall have been settled by the parties by any written contract, the Court shall be guided by such contract in awarding interest, whether as to the time before institution of suit or as to the subsequent time.

162. When any Court shall be of opinion that any case has been brought needlessly, vexatiously, and in order to harass the defendant, it may award compensation to the defendant by damages which shall not exceed 25 per cent. on the valuation of the suit When any Court shall be of opinion that any defence has been made needlessly, vexatiously, or in order to harass or delay the plaintiff, it may, when decreeing the case, award interest up to 25 per cent. on the valuation of the suit to run for such term as the Court may direct.

163. All Courts may relieve as against a penalty by substituting therefor reasonable interest.

164. Whenever it shall appear to any Court that a criminal office of any kind, whether the same be punishable under the provisions of the Indian Penal Code, or under any special law, has been committed during the course of any proceedings before it, or at some other time, and that the same ought to be made the subject of a criminal prosecution, the Court shall draw up a précis of the facts of the case and of the evidence for the prosecution, and shall transmit the same to any Magistrate having jurisdiction. On receipt thereof, the said Magistrate shall proceed according to law. Provided that if the offence fall under sections 172, 173, 174, 175, 178, 180, 184, or 186 of the Indian Penal Code, or consist of the abetment of any of the offences punishable under these sections, the Court, instead of sending the matter to the Magistrate, may itself summarily try it, and on conviction may punish by fine not exceeding Rs. 50. The "General Clauses Act 1868," section 5, shall apply to fines imposed by any Rent Suit Court under this section of this Act.

165. When any question of limitation arises in connection with any minor, the following rules shall apply:—

I.—If the cause of action arose in the time of an adult predecessor, and a portion of the period of limitation shall have run, during the life-time of such predecessor such part shall not again run in favour of the minor; but the running of the term of limitation shall be suspended, until—

(*a*)—A guardian shall have been appointed to the minor by the Court of Wards or by the Civil Court.

(*b*)—If no such guardian be appointed, then until the minor attain the age of twenty-one years.

II.—If a cause of action shall have arrived during the life of a minor predecessor, or to the minor personally after the death of an adult predecessor, the period of limitation shall not begin to run, until—

(*a*)—A guardian shall have been appointed to the minor by the Court of Wards or by the Civil Court.

(*b*)—If no such guardian be appointed, then until the minor attain the age of twenty-one years.

Explanation.—If after the appointment of a guardian by the Court of Wards or by the Civil Court, the same dies or ceases to act while yet the period of limitation has not expired, the balance of such period shall cease running until a new guardian shall be appointed by either of these Courts; or until the minor attains the age of twenty-one years.

166. The periods of limitation applicable to suits, applications, and appeals under this Act shall be those stated in the fourth schedule hereto annexed.

167. All Courts shall of their own motion dismiss any suits, applications, or appeals which shall be instituted after expiry of the statutory time, provided :—

I.—The Court shall not be bound to raise and try any fact on which the limitation bar in any suit depends, unless required by the parties to do so.

II.—If the Court be closed on the last day of any period, any suit, application, or appeal shall be in time, if presented on the first open day following.

III.—Such reasonable increment as the Court of appeal may allow shall be made to the statutory term in order to allow of copies of proceedings being taken by the parties.

IV.—An Appellate Court shall have a discretion to admit an appeal presented after expiry of the statutory term, together with its increment, as provided in clause III, on good and sufficient cause being shown for the delay.

168. In this Act words importing the singular number shall include the plural, and words importing the masculine gender shall include the feminine, unless there be in the context something repugnant thereto.

169. Whenever any matter of procedure shall arise for which no special provision has been made in this Act, the Court shall follow such procedure as shall most conveniently and promptly meet the exigencies of the case.

Illustration.—This Act contains no directions as to procedure after date of attachment and before date of sale of moveable property. Courts shall in each case proceed to provide for the custody of such property between these dates in such manner as shall be most suitable to the nature of the property attached.

W. J.—Reg. No. 6350C—327—5 9-84.

No 633, dated Cuttack, the 31st July 1884.

From—J. B. WORGAN, Esq, Offg. Judge of Cuttack,

To—The Secretary to the Government of Bengal, Revenue Department.

I HAVE the honour to acknowledge the receipt on the 18th ultimo, at Darjeeling, of your circular No 5T—R of the 28th of May last, on the subject of the Bengal Tenancy Bill.

2. In offering such remarks as occur to me on the matters on which my opinion is called for, I shall follow the order of arrangement adopted in your letter. Bearing in mind the opening of your 7th paragraph, I shall not express any opinion on anything beyond the scope of your letter to the Commissioners and that to myself, and the letter of the Government of India of the 5th of May. The "paragraphs" referred to by me hereafter are the paragraphs of your letter.

3. *Paragraph* 3.—The word "village" as used in the Bill does not appear to have been defined. It might perhaps be well to add a definition.

4. *Paragraph* 4.—The classification of tenants laid down in chapter 2 of the Bill does not appear to me, from what I have seen of agricultural relations in this province, to be ill-suited for practical use. The idea of tenures is embodied in the rights known as sarbarakari, mukaddami, &c; the idea of rayati rights is embodied in the "praja," which word is indeed the equivalent of the word "rayat." The idea of sub-letting by rayats to under-rayats is familiar to the people also, though, from what I have seen, such sub-letting is less common here than in other parts of the country.

5. Looking at the definitions of "proprietor" and "tenureholder," I think that the definition of "rayat" given in section 5 (3) does not cover rayats holding under unregistered lakhirajdars. There seems to be no reason for not giving such rayats the same status as those holding under proprietors of registered revenue-free lands; and in this view the definition of "proprietor" might be amplified.

6. The presumption founded on the area of a holding proposed in section 5 (5) I should myself call a fair one. Rai Kristodas Pal, I observe, regards it as inconsistent with the ancient and existing land law; but having regard to what I take to be the true conception of a "rayat," I am not disposed to agree with him. In cases where the holder does not sub-let at all he is given the status of rayat, and *bonâ fide* rayats will not be affected.

7. The question of the practicability of the application of the rule for conversion of occupancy rayats into tenureholders will depend very much on the view that may be taken by the class of persons affected by the measure. Should they as a body regard the position of tenureholder with disfavour, there will be a good deal of sub-letting beyond the limit, and denial of the same when called in question. Looking at the status of rayats as compared with that of under-rayats under the Bill, the consequences of a rayat's transforming his under rayats into rayats with either actual or potential occupancy rights must be I think to greatly diminish the value of the holding to him. He can no longer eject them at will by mere notice. He cannot enhance their rent without suit if they refuse to agree to the enhancement. He is thus as respects the sub-let portion worse off. As regards the portion not sub-let, I presume he becomes a tenureholder quoad the whole holding, and has accordingly no right of occupancy left to him in the said portion, nor can he make any improvements in the same, even though he cultivate it himself. Assuming registration of his holding to have been effected, he is liable to the summary sale of his tenure. *Per contra* he will be safe against distraint, and he may sell to whom he pleases without the hindrance of pre-emption by the zemindar. On the whole, however, I should say that though to sub-let half of a holding of less than 100 bighas might often suit a rayat, this not affecting his status in either the let or the unlet portion, to do *more* would not be profitable. The discouragement would be much greater still were there no difference between occupancy and non-occupancy rates which I think might with propriety be the rule; but this is not provided by the Bill, and I take the matter as it stands.

8. In what I have said above I have had in my mind more especially the position of the *bonâ fide* occupancy rayat. If such a man be likely to be discouraged from sub-letting beyond the harmless limit, the considerations noted should seemingly tell strongly to check the acquisition of occupancy holdings by purchasers whose sole object is to make all they can out of the same without any of the trouble or risk of cultivation. Directly they proceed to pass the line they are shorn of most of what they thought to get. With tenants-at-will they might rack-rent as much as they could, but now the under-rayats can to some extent hold their own, and the question becomes whether the game is worth the candle, the under-rayats being in possession.

9. Assuming, as I then do, that the conversion of status will be looked on as a change for the worse, and sub-letting beyond the allowed point a thing to be done so as to avoid its evil consequences, I have no doubt that the application of the rule will be a matter of difficulty. Registration is provided to make it practicable, and if efficient registration can be attained, it will I think do so. No registration that does not stand on a sound and perfect basis will suffice to prevent the provision from being infractuous, and the basis necessary seems to me to be a record of rights of the agricultural community. This is one of the measures contemplated by the Bill. With it accomplished, the enforcement of the rule should be so far easy as to prevent much evasion of it. The work is indeed a gigantic one, if extended over the province, but it is one with which the experience gained by the

revenue authorities in the working of the Land Registration law will enable them to deal. They *may* consider registration *before* the general record of rights feasible. The question is an administrative one, and I need say nothing more on it, except that I presume that the revenue officer when framing his record will, as regards occupancy rayats, ascertain and record the extent to which they may have sub-let their holdings; or, if he enters such tenants at once as tenureholders, he will shew in the record that they are such by conversion, so that due effect may be as regards them given to clause (*b*) of section 37 of the Bill.

10. *Paragraph* 5.—Assuming that registration will achieve a correct and complete classification of holdings there remains of course the fact that sub-letting beyond the limit may and doubtless will go on after it is over, and it is not likely that it will in many cases be brought to notice. The class (the under-rayats) to whose interest it is to have the conversion rule operative will probably very rarely come forward. The *zemindar* is bound to know of such sub-letting, and will probably report it to the revenue authorities wherever he thinks the same at all against his interest. This it will sometimes be. I see, however, that Rai Kristodas Pal objects to the conversion rule from the zemindar's point of view. The zemindar can no longer distrain on nor pre-empt the holding. If these are real grievances the zemindar will not generally move. Thus the law will become a dead letter, as did the old Mutation Law.

11. This appears to me to be a formidable difficulty, and one which, with reference to the importance of keeping occupancy rights in the hands of *bonâ fide* rayats, demands a remedy. One way would be to allow the right of pre-emption in the cases of tenures by conversion. This would discourage sub-letting beyond the limit, and would make the *zemindar* less indifferent to it. The distraint difficulty remains. It might be removed by allowing distraint for arrears of a tenure by conversion. Under the former law distraint could be made only by the landlord next to the actual cultivator. Under the Bill the landlord of the rayat may in certain cases distrain the crop of the under-rayat. If allowed the privilege suggested by me, the zemindar would have nothing left to complain of, and would probably in his own interests aid the revenue authorities in keeping up the record of rights quoad conversion tenures. He might indeed in this case be made legally responsible for doing so, registering in a form prescribed all sub-lettings by his occupancy rayats, and sending extracts of his register to the officer in charge of the record of rights to be entered in the record; such entries to be presumed till the contrary be shewn to be correct.

12. As regards the proposed rules for enhancement of tenureholders' rents, I should, as it is desired to discourage the growth of sub-letting, be disposed to exclude conversion tenures from the 10 years' rule. Existing and ancient tenures deserve respect, and cannot with justice be depreciated: they may even be improved, as proposed in section (3) of the Bill, without public prejudice, but whether conversion tenures should be placed on the same footing as such old tenures is, if it be desired to repress sub-letting, a matter which deserves consideration.

13. *Paragraph* 6.—As regards the retention in its present form of the 20 years' presumption rule, there seems to be force in what Rai Kristodas Pal says as to the effect of doing so on the more moderate landlords. In Orissa the zemindars will not be affected, as the province has not been permanently settled, and though the thani rayats of the temporary settlement of 1857 are protected from enhancement during the currency of the same, I presume that as the zemindars will be at the next settlement liable to enhancement of their assessment, so will be their rayats. If the thani rayats cannot claim to hold on at fixed rates, the pahi rayats cannot of course do so on the same principle, viz. that fixity of rayati rents presupposes a permanent settlement made, and not merely contemplated.

14. *Paragraph* 7.—As respects the extent to which the occupancy right of settled rayats should go, I doubt whether any injury worth speaking of will arise to the zemindars from the proposed rule, that is if the conversion rule works efficiently. I can hardly suppose that many *bonâ fide* rayats have got much land out of their own villages or villages close to the same. These they may cultivate to such extent themselves as to escape the conversion rule. Distant or extensive holdings they could not do this with, and such holdings will become tenures either under section 5 (5) or by the conversion rule. If the proposed rule as to extent be, as said by Rai Kristodas Pal, objectionable from the zemindar's point of view, they may minimise the evil by bringing to notice all cases where occupancy holdings should come under the rule for turning them into tenures, and the keeping of the record of rights would thus be facilitated, as already suggested in a former paragraph of this letter.

15. As regards joint-proprietorship or tenureholding not barring the acquisition of right of occupancy in the land, I should be disposed to disallow this right. As the zemindar is precluded from acquiring the occupancy right, so I think should the occupancy ryot be precluded from buying a share in the estate containing his holding.

16. *Paragraph* 8.—The permission to make improvements [clause (*b*) of section 31] seems to me open to no objection. So also clause (*g*), assuming that the provisions of the Act work properly.

17. As respects the legalising the transfer by sale of occupancy rights, I think that if the buying of them by men of the class that it is justly desired to exclude can be prevented, such sales ought to be legal, even without the consent of the zemindar, which is said by the Maharaja of Durbhunga to have hitherto been, and throughout Orissa is, an element in the transaction. To prevent doubt, and to quiet titles, such sales should either be legal or

illegal. I do not think that it should be a matter dependent on custom. It seems to be generally held to be impossible to prevent such sales. An occupancy ryot selling his holding may not always be to blame for giving up his position. Even under the hitherto state of things I have been in favour of legalising such transfers, and have in previous reports to Government (letters Nos. 75 of the 15th of February and 798 of the 12th of December 1879) expressed myself strongly to this effect. The landlords' objections *might* of course be met by making the consent of the landlord necessary to the validity of the sale, and allowing him where he had refused such consent to oust the incoming purchaser. Refusal to consent might be made a matter capable of adjudication by the revenue authorities.

18. *Paragraph* 9.—With reference to the proposed grounds of enhancement, there is, I think, difficulty in the absence of a field survey and classification of soils in adjudicating satisfactorily on the "prevailing rate" ground, wherever it is alleged by the ryot that his land is really less good than that of the ryots allegedly paying higher rents. Then again assuming that the classification of the land be correct, the classification of the ryots may be not so, the higher-paying ryots being perhaps creatures of the landlord, perhaps not really paying at all what is shewn by their engagements or by the jamabandi. Much depends here upon the way in which the courts work the rule. If they are satisfied with less evidence than they should be on the question of what rents are really being paid in the village or in adjacent villages, the forcing up of occupancy rents becomes an easy matter.

19. From my own experience of enhancement suits, or suits for arrears at enhanced rates, I think the courts of first instance often fail in this matter. I have seen many cases where the production of three or four *soi disant* occupancy rayats admitting the payment of higher rates, and saying that others did the same, has been held sufficient to warrant a decree. Jamabandis were adduced by the zemindar to shew the payment of these rates, which actually put down the higher rate as paid by the recusant ryot, this peculiarity being unnoticed by the court. There is in such cases strong reason to suspect that the leverage alluded to in your letter is at work. I do not think the law at fault here. The prevailing rate should I think be taken to be the rate paid by the majority of rayats suited for comparison in the villages chosen for such comparison, and that the majority would voluntarily place themselves in a losing or dangerous position in order to oblige the zemindar and injure their neighbours seems improbable.

20. The restriction of enhancement on the ground of increased productivity to fluvial action and landlords' improvements seems to me desirable, and the provisions for registration of such improvements sufficient. As regards enhancement on the ground of rise in prices, it is a fair and workable ground as regards land used for the growth of staple food-crops of which the prices have risen. This will usually be the bulk of the arable land in a village. I do not, however, quite see why, because staple food-crops rise in price, a rayat should have to pay more for land on which he has been been growing other produce of which the price has not risen, or may even have fallen, nor why, if his kind of crop becomes more valuable while staple crops have not risen, the landlord should get no share of the increased profit from the land. The prices for some years back of such crops as jute, indigo, silk, tobacco, cotton, &c., are, I should say, easier to ascertain than those of rice, wheat, maize, &c, owing to their being more often sold to European firms or planters, or to native dealers in the habit of keeping regular books and in connection with European constituents or customers. The prices of such crops may fluctuate, but this does not prove that they have not in the long run risen, or that they cannot do so. To judge of this, a rise for two or three years would not be sufficient index, but an average of, say, five years as against the average of the five years before them might form a workable standard.

21. Enhancement out of court on the ground of rise in prices or of fluvial action might, I think, be allowed to be made to the same extent as in court; as, if improperly assessed, the matter is capable of comparatively easy settlement, and a good deal of litigation would probably be avoided In the case of outside enhancement on the ground of a higher prevailing rate, looking at the danger of collusion, I think the making a less enhancement obtainable than could be got by suit desirable.

22. The absence of some limit in cases of enhancement on the ground of landlords' improvements will, I think, make the decision of such cases difficult. Such cases will not be common. The rent previously paid is of course no guide here, nor will the prevailing rate help the court. Prices are irrelevant also. What is effected is an increase in the value of the land, through an assumed increase in its yield For this increase the landlord has paid It is the return yielded by his investment. He will look for a return for this expenditure equal to what he could get by any ordinary investment. If *this* be not obtainable landlords will hardly lay out their money on *improvements*. If the increased yield does not equal this amount in value he cannot take it from the ryot, for that would be to put the ryot to a loss. If it equals it, he will probably think himself entitled to the whole of it, for otherwise he will himself be a loser. If it exceeds what he could get from an ordinary investment to the same amount, the excess might perhaps be allowed to the ryot. The increase in the produce and the value of the same, and the cost of the improvement, must then be ascertained, nor do I see any other fair method of dealing with cases of this particular description.

23. The question of allowance for increased cost of cultivation in cases of enhancement on the ground of rise in prices is a difficult one. It is stated in the letter of the Government of India that if one fact is clearly brought out by enquiry it is the impossibility of ascertaining the cost of cultivation with any degree of accuracy. Equally great must

be the difficulty of saying how much greater the cost is now than it used to be. The matter is one on which I find myself unable to make any practical suggestions Under the Rent Law of 1859, it virtually formed a ground for abatement of rent, as increased cost of production of course disminished the value of the produce to the cultivator. Under the proposed law it is not a ground for reduction of rent. Were it ascertainable, it might fairly be deducted from the existing rent before enhancing the same. The difficutly is to estimate it.

24. *Paragraph* 11.—The provision about re-letting in section 42(1) will undoubtedly tend to level up rents. The danger to the rayats *originates* in section 56 of the Bill. If it be desired to improve and to secure the status of the rayats as a body, I think that the Bill will work in an unsatisfactory manner. The insisting on the equality of occupancy and non-occupancy rates would entirely remove all the anticipated dangers, and would be an enormous boon to the rayat class.

25. The limiting of a non-occupancy rayat's initial rates would no doubt be vehemently objected to by the zemindars. Even as it stands the Bill is condemned by the Maharaja of Durbhunga as containing clauses of a revolutionary character, infringing strictly guaranteed rights. The question is whether to rack-rent was one of these guaranteed rights. I should say it was not. The statement of objects and reasons annexed to the Bill of 1883 makes it plain that the power to protect the rayats and other cultivators of the soil was reserved to the Government by Regulation I of 1793. A non-occupancy rayat is a cultivator of the soil, and thus entitled to protection ; nor is the character of such protection limited by any of the Decennial or of the Permanent Settlement Regulations. The non-occupancy rayat has hitherto obtained little enough of protection as regards the terms on which he can acquire a holding, and here there has been a foundation laid for a gradual raising of occupancy rates, wherever high-rated non-occupancy rayats have become by lapse of time rayats with rights of occupancy in sufficient numbers. That the occupancy rates would by this process be raised to rates amounting to *rack-renting*, I can hardly suppose, for non-occupancy rayats would hardly remain in the village for so long a time as 12 years if their position were made too hard to bear ; but a good deal could be done short of *driving away* non-occupancy tenants. Under the proposed law 12 years are not necessary for a non-occupancy holding to become an occupancy one. It becomes so the moment a settled rayat takes it ; at least so I understand section 25 of the Bill. The raising of the occupancy rates is thus not only facilitated, but much expedited : and there is here a real danger of their rising to rack-rents, for even the settled rayats, who are less livers from hand to mouth, and less able to desert the village, than the more nomadic non-occupancy rayat.

26. If these apprehensions have any foundation preventive measures are justifiable. All that the zemindars can fairly ask is that the measures taken to protect the rayats may not be such as to cause the landlords immediate loss, or to cut off *all* source of profit from non-occupancy holdings in future. Such a measure would, I think, be the prescribing a maximum limit to a non-occupancy rayat's initial rent, of, say, what the holding is worth at rates equal to the *highest* occupancy rates in the village Of course it may be that the land is of better quality than any of the occupancy land, and ought to yield more rent. If so, the zemindar may in due to time get such enhancement as the rent ought to bear. It may be on the other hand that the land is not as good as the highest-rated occupancy land in the village. In this case the zemindar has no just ground of complaint to start with.

27. The initial rent being thus limited, some safegaurd is necessary to prevent the advantage gained being nullified by the effect of inordinate enhancement, of which there is a risk under the operation of section 57 of the Bill. It is very difficult to see how this can be prevented without in some way limiting non-occupancy enhancement. This the Bill does as regards the extent to which it may go at any one time, but not as regards the duration of the enhancements The rapid rise of non-occupancy rates might be prevented by not allowing a fresh enhancement till after some fixed period, say, 10 years ; but even so the anticipated results must come about at last, unless some rigid ultimate limit be laid down. The only possible one seems to me to be the limitation of the share of the produce allowable to the landlord Rather than leave the door open to rack-renting, I think this limitation should be declared. To deal with the evil in any other way seems to me impossible

28. The measures suggested above are no doubt measures of considerable stringency ; but stringency is at times necessary. They need not be made retrospective, so as to affect the present rent-roll, but if made the law in future they would prevent an aggravation of the evil. Rents may be taken to have pretty well settled themselves generally ; real and proper grounds of enhancement of the rents will still be open, and more than this just landlords should not expect.

29. *Paragraph* 12.—As regards "bastu" or homestead lands, they are in the case of thani ryots in this province held free. With respect to the "pahi" ryots, who pay rent for their homestead lands, and many of whom have of course under the law of 1859 acquired rights of occupancy, I should be disposed to exempt such lands from enhancement, as they yield no produce.

With reference to the existence of any practice of exempting from sale in executions of decree of "bastu" land, I have myself never come across any instances of the kind, and I am informed by those who ought to know that the practice does not exist.

With regard to any custom whereby an ejected or outgoing rayat is entitled to retain his homestead lands the same remarks apply.

30. *Paragraph* 13.—As regards deterioration of land by imperceptible causes, I am not aware of any facts bearing on this point in this province.

31. *Paragraph* 14.—I have to say the same as respects the subject of price-lists.

32. *Paragraph* 15.—As to the making allowance for increased cost of production when using price-lists in enhancement cases, I do not, as I have before said, see how it can be estimated, and thus how any rule made could be worked.

As regards the regulation of rents with reference to the prices of staple food-grains alone, I have already said all that I have to say.

33. *Paragraph* 16 —The above remark applies to this paragraph.

34. *Paragraph* 17.—The limitation of the rents of under-rayats is, I think, fair in principle. Such persons are cultivators, and should not be left entirely unprotected.

The limiting the terms of leases to under-rayats seems desirable, as being no doubt likely to discourage sub-letting.

35. *Paragraphs* 18 *and* 19.—I have no remarks to offer on the subject of these paragraphs.

36. *Paragraph* 20.—As regards the rule about abandonment and the risk of evictions being effected and pleas of abandonment set up by the landlord, I would suggest that the rayat should be allowed to notify his intention to abandon his holding to the revenue authorities, failing which he should continue to be liable for the rent, or to a fine for breach of law. No abandonments not so notified being recognised by the courts ; or again, the zemindar might be made to report abandonments, and pay a fee for service of notice on the rayat, whose whereabouts would in most cases be known to or ascertainable by him.

37. *Paragraph* 21.—The provisions for measurement of lands by landlords are, I think, good. I would restrict the measurement of lakhiraj holdings by landlords to the external boundaries, so as to give the area only. I think the actual measurement should be made with the local pole, the figures being reduced to English measures afterwards.

38. *Paragraph* 22.—The provisions for the appointment of managers seem necessary. The rule must of course be worked with caution, and not on every vexatious application. The courts have a discretion, and if it be properly exercised no harm ought to result. Much will depend upon the sort of men nominated under section 105 of the Bill. If they are of a fit character, good might even be looked for, as has been actually the case with most estates managed by the Court of Wards.

39. *Paragraph* 24.—Land in which a cultivator cannot acquire a right of occupancy. I am not aware of any other such land besides the kinds of land specified in section 138 of the Bill.

40. *Paragr ph* 25 —I should not be disposed to alter the present law of distraint, more especially if checks are put upon enhancement.

41. *Paragraph* 26 —The proposed procedure provisions appear to me good. Those about payment into court are an improvement on the present law I do not think much more could be done without risk to shorten rent cases. They cannot be disposed quite haphazard.

42. *Paragraph* 27 —Rai Kristodas Pal objects to the patni tenure sale portion of the Bill, but the principle being untouched I see no weight in the opposition.

43. *Paragraph* 28.—The registration of tenures is no doubt a matter of very great importance. As to how it should be *effected* I feel myself unable to offer any practical suggestions, the matter being one rather within the experience of the revenue authorities.

44. *Paragraph* 29.—I have no remarks to offer on the rule about occupancy right in respect of chur and dearah lands, save that it seems to me unobjectionable.

Section 210, barring contracts opposed to the law, I entirely approve of; though perhaps clause (*d*) is hardly necessary.

45. *Paragraph* 30.—The rule proposed for pasturage suits and such like seems to me open to no objection.

46. *Paragraph* 31.—The question of the application of the summary sale procedure to unregistered dependent taluqs is one on which I have no knowledge of the facts beyond what can be gleaned from the statistical account of the province, and other works of the same kind. If there be any such taluqs of any size, their being made to pay their own revenue direct would facilitate registration, and thus the working of the procedure. The question is, however, one for the revenue authorities.

47. *Paragraph* 32.—The summary sale of rent-free tenures would, I fear, throw a good deal of work on the revenue authorities for petty arrears, and open the door to a great deal of hardship and irregular acquisition of such tenures.

48. *Paragraph* 33.—Utbandi and halhasili tenures. I have never heard of the existence of any tenures of this name or character here, and I do not find on enquiry that any such are known.

49. *Paragraph* 34.—No rayatwari holdings in Orissa are saleable without the consent of the zemindar by *custom*. The Bill will thus make no real difference in the position of the transferring rayat here. The persons affected will be the landlords. They will, if the proposed law be made general, have in future to pay for what has hitherto cost them nothing.

50. In conclusion, I have to apologise for a little delay in the submission of this report. It has been owing to my being away from my office till the 19th instant, when I resumed charge, and had to go on with the current sessions, from which I was not free till the 26th instant. The absence of references of importance made it impracticable for me to write the present letter whilst on leave.

J. E. S.—Reg. No. 4967C—327—6-8-84.

No. 1119, dated Ranchi, the 29th August 1884.

From—G. E. PORTER, Esq., Judicial Commissioner, Chota Nagpore,

To—The Secretary to the Government of Bengal, Revenue Department.

IN answer to your circular No. 5T—R, dated the 28th May last, calling my attention to the revised Bengal Tenancy Bill, with the report of the Select Committee, and the dissents published in the *Calcutta Gazette* of 2nd April, and forwarding copies of the letters marginally noted, I have the honour to submit, after careful consideration, my opinion on the questions raised in these papers.

Letter No. 784, dated 5th May 1884, from Secretary, Government of India, Legislative Department, to Secretary, Government of Bengal, Revenue Department.

Circular No 3T—R, from A. P. MacDonnell, Esq., Officiating Secretary, Government of Bengal, to all Commissioners.

2. It will be convenient to take the questions in the order given in your letter to the Commissioners of Divisions.

CHAPTER I.

3. Calls for no remarks.

CHAPTER II.

4. The points to be considered under this chapter are—

(*a*) Whether the definition of ryot in section V (3) covers all classes of ryots—those holding under unregistered lakhirajdars as well as under the holders of revenue-paying lands.

(*b*) Whether the presumption in section V (5) is, with reference to existing practice, a fair presumption, and if not fair, what presumption of the sort would be fair.

(*c*) Whether the conversion of the subletting occupancy ryot into a tenureholder (section 37) is a workable provision and also likely to secure the objects for which it was devised. On these points I am of opinion—

(*a*) That an unregistered lakhirajdar being a tenant under section III (3) and a tenureholder under section V (1), cultivators under him would come under the definition of *ryots* as given in section V (2).

(*b*) The presumption in section V (5) appears to be a fair one. I see no valid reason why the zemindars should object to it.

(*c*) It appears to me that, if the principle of equality between occupancy and non-occupancy rates of rent is not recognized, the provisions of section 37 will be a direct encouragement to money-lenders to speculate in land. I think it will be impossible by any devise of legislation to shut out mahajuns and money-lenders from buying occupancy rights. As to subleases, I am of opinion that there should be no restrictions placed on the right of an occupancy ryot to sublease his land in whole or in part. As to registration, a ryot will register or not as it suits him. If he finds that he is better off as a tenureholder he will register, if not, he will keep quiet. In any case if this section is passed into law as it stands, I apprehend that it will give rise to many collusive and benami transactions, and lead to much litigation.

CHAPTER III.

5. Deals with tenureholders as defined in section V (1) of the Bill. I have no modifications to suggest in this chapter. No cases of enhancement by suit of a tenureholder's rent have ever come under my observation. The two classes of tenureholders most prevalent in the districts in which I have been are, first, makararidars and others holding at fixed rates not liable to enhancement; *second*, ticcadars—lessees holding for a term of years under special contracts. The provisions of this chapter in regard to enhancement would not be applicable to either of these classes of tenureholders. I think the provisions of the chapter as they stand are fair and well considered, although somewhat difficult to work with the present machinery of the courts.

CHAPTER IV.

6. I think that the 20 years' presumption may fairly be retained in the case of ryots claiming to hold at fixed rates. It is much more difficult for ryots to prove that they have held at fixed rates for 20 years than for the landlord to rebut the presumption. I am inclined, however, to agree with Mr. Gibbon that the landlord should have the right of pre-emption in the case of ryots holding at fixed rates, and I also think it would be expedient to fix a term within which the holdings of such ryots should be registered. As remarked in paragraph 7 of the Government of India's letter, "the presumption being cumulative, every year renders it less in accordance with real facts, and also increases the landlord's difficulty of rebutting it."

CHAPTER V.

7. Deals with occupancy rights. The questions to be discussed are stated in your letter as follows:—(*a*) Should the capacity of the settled ryot to hold on an occupancy title land into possession of which he has been let extend over an entire "estate," or should it cover only a portion of the "estate" when the latter extends over a large tract of country or into more than one district? (*b*) Should the "estate" within which such a right may accrue to the settled ryot be of the extent it was 30 years ago or at any more recent period? On these points I am of opinion that there is no good reason to alter the definitions as they stand. I do not think that the zemindars need be

under any apprehension that a ryot will take up land for cultivation in different parts of a large estate, and if any other fiscal or administrative area, such as pergunnah or sub-division or district, is adopted, a ryot living on the borders may, with regard to one plot of land, acquire occupancy rights, and with regard to another be in a different position, although paying rent for the lands to the same landlord. As regards the provisions of sections 28 and 29 (1) and (2), I am inclined to think that some provision should be made to prevent the merger of the occupancy right in the proprietary right in the event of an occupancy ryot obtaining by purchase a share in the estate. At the same time I fail to perceive why a proprietor or tenureholder who wants land for *bonâ fide* cultivation should not be allowed to purchase occupancy rights as provided in section 29 (1). These sections will doubtless lead to many complicated benami transactions.

8. Section 31 deals with the free sale of occupancy rights. As I have already observed, I do not think that any legislative expedient can or will prevent such rights from passing into the hands of mahajuns and money-lenders. The only feasible method of protecting their ryots from being rack-rented is to enact that the rates of rent payable by such ryots are not to exceed the rates prevailing in the neighbourhood; in other words, to establish an equality between occupancy and non-occupancy rates of rent. Unless this is done, I fail to perceive any way out of the difficulty.

9. Section 39 *et seq* refer to the intricate question of enhancement, and I am asked to deal with it under two heads: (*a*) the grounds of enhancement; (*b*) the extent to which enhancements may be had. So far as my experience goes, the courts have found considerable difficulty in deciding enhancement suits, which are seldom instituted unless the landlord asks such high rents that the ryot is quite unable to meet his demands. As a rule (of course there are exceptions) the ryot submits to a gradual enhancement of rent; and it is highly desirable that some measures should be framed, protecting on the one hand the ryot from arbitrary and excessive enhancement, and providing on the other that the landlord should get fair rent for the land. As a rule landlords claim enhancements on two grounds, *first*, the prevailing rates of the neighbourhood being higher; *second*, the value of the produce, &c., having increased (section 17 (1) and (2), Act X of 1859). Experience shews that it is very difficult to work the enhancement sections on the value of the produce, and therefore the courts generally base their decrees on the prevailing rates. The way in which these cases are at present decided appears to me highly unsatisfactory, and what is really wanted is not, in my opinion, any change in the law with respect to the grounds of enhancement, but a change in the machinery which carries out the law. Enhancement suits are now virtually decided by the amins, who are deputed to measure the land and ascertain the quality thereof, and the rates of rent. The aggregate rent can easily be increased or decreased by the classification of the lands, and it is quite impossible for the courts to check these matters. In the North-Western Provinces and other parts of India these settlement operations are conducted by trained officers with a suitable staff. Here, in Bengal, a civil court is expected to decide intricate enhancement suits on the evidence of an amin, who, although he may be able to measure the land, has seldom any special training in classifying it, which is much more important than the measurement. There can also be no doubt that the prevailing rate is often forced up by collusive or fictitious rates. I am of opinion that it is almost impossible for the courts, as at present constituted, to assess, with any degree of accuracy, a fair and equitable rent in contested cases, and that this is the reason why enhancement suits are so seldom brought, and also why, when instituted, they lead to such long and bitter litigation. Theoretically, I have nothing to say against the sections as they stand in the present Bill, but practically, I think, they are not workable by the present machinery of the courts.

10. With reference to the question whether enhancements should be allowed out of court in cases of increased prices or fluvial action to the same extent as in court, where the landlord's claim in all its bearings would be subjected to the closest examination under a judicial enquiry, I am of opinion that it would be unsafe and inexpedient to interfere too far with the freedom of contract, and to force parties into the courts where, as a rule, the longest purse wins the day. If a ryot can shew that he has been forced into an unfair contract, the courts can give him relief; but I think the landlord, if so minded, can harass his tenant much more through the courts than if he is left free to deal with him by private contract.

11. There can, I think, be little doubt that the danger pointed out by you in the 11th paragraph of your letter to the Commissioners, as the probable results of sections 42 (1) and 60 (9) of the revised Bill, is a real danger, and will enable unscrupulous landlords to exact very high rents and to run up the "prevailing rate." The only way to meet this danger would be to equalize the rates of occupancy and non-occupancy ryots.

12. With reference to the question of "bastu" raised in the 12th paragraph of your letter, the first point to be considered is what is the meaning of "bastu." In one part of the paragraph it appears to be used as meaning "the site of the ryot's house," in another the lands immediately round the village, *i e.* the homestead lands. These lands are as a rule the most valuable lands in the village, where the ryots cultivate potatoes, Indian-corn, sugarcane, and vegetables of all kinds. The rent of these lands is generally much higher than the rent of the rice lands and high lands which form the bulk of the village lands. In the Gya district the rent of rice lands, or high lands on which spring crops are grown, is generally paid in kind, while the homestead lands pay rent in cash. So far as the actual site of a ryot's house is concerned, the general rule appears to be that a ryot is not ejected from his homestead even though he loses his cultivation. He then sinks into the

position of a day labourer, and is allowed to retain his thatched or tiled house, the materials of which are sometimes sold in execution of decree; but the homestead lands form an integral portion of a ryot's holding. If in any district the homestead lands are held on a different title from the other lands constituting a ryot's holding, the difficulty pointed out might be met by introducing in section 216 the words "or homestead lands." The section would run thus—

"When a ryot holds his homestead or homestead lands otherwise than as part of his holding as a ryot, the incidents of his tenancy of the homestead or homestead lands shall be regulated by local custom." I am informed that in the zemindari of Burrabhum in the Manbhoom district, all ryots pay rent for their homesteads, which rent is collected by middlemen, who obtain a percentage on the collections.

13. With reference to section 51 (*a*) the retention of the wording of the corresponding section 18, Act X of 1859, would meet the difficulty pointed out. The section might be worded as follows:—(*a*) "On the ground that the productive powers of the land have been decreased by any cause without the fault or beyond the powers of the ryot." With regard to the provisions made in section 53 *et seq.* for the commutation of rents hitherto paid in kind, I am asked whether, with regard to the 20 years' presumption of section 64, clause (2), a fixed proportion of the crop can be fairly considered, having regard to the rise and fall of prices, as the natural and equivalent antecedent of a money-rent invariable over a term of years; in other words, whether ryots paying their rents in kind are entitled to the presumption of fixity of tenure if they can shew that their rents have been so collected for the last 20 years. I think that this class of ryots should not be entitled to this presumption. Of course they are entitled to be considered settled ryots if they have held and cultivated their lands for 12 years and upwards, but it can hardly be said that they have held at *fixed* rates. The commutation of grain rents into money payments would seriously affect the ryots of some of the Behar districts, especially Gya, the zemindars of which district would be glad enough if they could get their rents permanently paid in cash instead of in grain. But if the system now in force is changed, the question is, who is to defray the expenses of the *ghulandazi* (earthworks), and to keep up the irrigation channels, and carry on the numerous law suits about water-rights. The crops in the Gya district depend on artificial irrigation. If the rents now payable in kind are commuted into cash payments, the landlord will cease to take any active interest in the irrigation of the lands, knowing that the tenants will have to pay him in cash whether the crops are bad or good. In commuting the rents, the courts should be obliged to take these matters into consideration. If the tenants have to keep up the irrigation channels and earthworks, they should pay a lower rent; but if this expense falls on the landlord, the tenants should take their share. The question is one beset with difficulties, and it is impossible in the scope of this letter to deal with it. I doubt if such suits will ever be instituted except by landlords who wish to harass their ryots, as the payment of rents in kind is much more advantageous to the latter than to the former.

14. The preparation of price lists (section 52) is one of the many duties which will devolve on the executive if this Bill is passed into law. On this point I have nothing to say except that the rate prevailing at the head-quarters of a district or sub-division is no criterion of the rates prevailing in the interior of the district or sub-division.

15 In paragraph 15 of your letter you ask for certain information with regard to section 45 of the revised Bill on the subject of crops, which will undoubtedly be furnished by the executive. So far as the general question of enhancement is concerned, section 48 gives ample powers to the court to take all the circumstances of each individual case into consideration, and not to decree any enhancement which appears unfair or inequitable. This throws a heavy responsibility on the court, but appears to be absolutely necessary, as it is quite impossible to make any hand-and-fast rule for the adjustment of rents.

CHAPTER VI.

16. Deals with non-occupancy ryots. Unless some limit is fixed on the rate of rent which a landlord can demand from a non-occupancy ryot when first admitted into the land, there can be no doubt that the provisions of this chapter will lead not only to rack-renting but also to opposition on the part of the landlord to a growth of occupancy rights. The only way to prevent this would be to equalize the rents payable by occupancy and non-occupancy ryots, or to enforce the check provided by section 75 (*d*) of the original Bill, which, as Mr. Reynolds points out, has been taken away.

CHAPTER VII.

17. Deals with under-ryots. While section 56 allows any rent agreed upon to be taken from non-occupancy ryots, section 62 limits the rent recoverable from under-ryots whose position will in many cases be better than that of the former; for example, a ryot may hold 50 or 60 bighas of land at privileged rates. If he sublets any portion of this land less than a half, he cannot take from his under-ryot a rent, calculated I presume by the rule of proportion, more than 50 per cent. higher than the rate he pays. How is this rate to be calculated? I think it would be better to leave the parties to settle their own rents in such cases.

CHAPTER VIII.

18. The only point on which my opinion is asked with reference to this chapter is the sufficiency of the provisions of sections 81 to 83 of the revised Bill, which deal generally with produce rents. From my experience in the Gya district, I think that the provisions of sections 81 and 82 are absolutely necessary to prevent the disputes which continually arise between landlord and tenant when crops are appraised. Hitherto, when the ryot will not accept the appraisement, the landlord as a rule prevents him from cutting the crops which lie rotting on the ground to the ultimate loss of both parties. As regards section 83, I apprehend that the provisions of this section will lead to much dispute. The practice in regard to appraisement (danabundi) is very different from that of division (agora bataya). When the crops are divided, a watchman (agora) is appointed, whose duty it is to see that the ryot does not remove any of the crop to his house, but bring it all to the village threshing floor (kalihan), where it is threshed out, and the grain divided, the straw and chaff being the perquisite of the ryôt. So long as the landlord and tenant are on good terms, this arrangement works well; but when any friction arises, the ryots can easily, with the connivance of the watchman, pilfer the crops at night, and leave very little to be divided. This probably led to the appraisement (or danabundi) system, under which small patches are cut as the crops are ripening, and a general average of the produce struck. Of course the landlord makes the average as high as possible, and the ryot tries to reduce it If the appraisement is accepted by the ryot, he is then allowed to cut and harvest the produce as he likes, so long as he makes over the landlord's share to his servants. It is clear therefore that under the present custom the tenant is not considered to be entitled to the exclusive possession of the produce until he has accepted the appraisement. These appraisement papers can easily be forged, and I think it would be a good plan to enact that such papers should not be accepted in any court of law unless registered as agreements, as they are in point of fact agreements on the part of the ryot to make over a certain proportion of his crop, or the value thereof, to his landlord by way of rent. If the parties cannot come to terms, they will resort to the provisions of sections 81 and 82. If section 83 is to be retained, I would alter it as follows :—

83 (1). When rent is taken by appraisement of produce, the tenant shall be entitled to exclusive possession on executing a registered agreement in favour of his landlord for the proportion of the produce due to him.

(2) Where rent is taken by division of the produce, the tenant shall not be entitled to exclusive possession of the whole produce. He shall cut and store the produce at the village threshing floor, and shall be entitled to his share after division.

(3) After appraisement, if accepted by the ryot as aforesaid, the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord. If the appraisement made by the landlord is not accepted by the tenant, the former should, within 15 days, apply to the Collector under section 81 of the Act, filing with his application a copy of the appraisement made by him and refused by the tenant. The Collector shall then proceed to enquire into the case.

(4) If the landlord neglects to make the application as aforesaid, the tenant may apply to have the crops appraised and divided, and if it be proved on enquiry held under section 82 that the landlord's demands were excessive, the costs of the enquiry shall be paid by him.

(5) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof, or if he without sufficient reason refuses the appraisement made by the landlord, he shall be liable to bear the costs of the enquiry, or if it is proved that he has removed any of the produce, before he is entitled to exclusive possession thereof, he will further be liable to prosecution under the Indian Penal Code for criminal misappropriation of property.

CHAPTER IX.

19. Deals with miscellaneous provisions as to landlords and tenants, such as improvements, surrender and abandonment, sub-division of holding, ejectment, measurements, and managers. I see no objection to allow non-occupancy ryots the right of constructing wells. The question raised in clause 1, paragraph 2 of the letter of the Government of India is one for revenue officers to consider.

20. On the subject of the abandonment by a ryot of his holding, I have no suggestions to offer. If the abandonment is really voluntary, the landlord should undoubtedly have the right of re-entry, and be entitled to re-settle the holding with another ryot. I think the instances of a landlord forcibly ejecting his occupancy ryots and settling new ones in their place must be exceptional. To make the abandoned right compulsorily saleable would be objectionable on many grounds.

21. I see no objection to the landlord being allowed to measure lakhiraj holdings, but I do not think the measurement should be allowed to extend to the survey of internal details, but should only shew the external boundaries. The measurement should be in standard bighas. Section 101 (2) provides that the Government measure shall be converted into the local measure for the purposes of the suit, which is sufficient for all practical purposes.

22. I see no objection to the provisions of the Bill as they stand in regard to the appointment of managers, except that I do not quite understand the term "inconvenience to the public" as used in section 102 (*a*).

23. As regards chapter X my opinion is not asked.

24. With reference to chapters XI and XII, I think that section 138 (1) covers all land which is commonly recognized as not of a character in which the cultivator can ordinarily acquire a right of occupancy.

CHAPTER XIII.

25. *Distraint.*—I am inclined to agree with the late Baboo Kristodas Pal that if a landlord is not allowed to distrain crops for arrears of rent without going through the tedious process of court, the greatest facility which he at present possesses for realizing his rents quickly will be taken from him. However, there can be no doubt that the provisions of this chapter will either do away with the abuse of distraint by abolishing it altogether, or, as is more likely, they will lead to a large increase of litigation.

CHAPTERS XIV AND XV

26. I have carefully considered the provisions of these chapters, and I think that sections 164 and 165 will undoubtedly facilitate the collection of rents by the landlords. The only point on which I am doubtful is whether the civil courts as at present constituted can fairly deal with the elaborate provisions of the revised Bill in enhancement cases. At present, as I have before observed, these cases are practically decided by the amin who holds the local enquiry. The amin is not as a rule an officer of sufficient experience to classify the lands and to make all the intricate enquiries and calculations which are necessary for the settlement and adjustment of rent. Section 174 (2) provides that the court may direct a local enquiry by such revenue officer as the local Government by rule directs. The revenue officer should not I think be of a lower rank than a Deputy Collector, and should be specially selected for his experience in settlement operations. The civil courts would be materially assisted if a capable and trustworthy officer were always available for such enquiries. I see no objection to the introduction of section 39, Act I (B.C.) of 1879 which provides for suits against ryots collectively into the revised Bill. It tends naturally to lessen the expenses of suits.

CHAPTER XVI.

27. Calls for no remarks.
28. I have nothing to say on the subject of the registration of tenures.
29. I have already (paragraph 12) discussed the question of homestead lands.

CHAPTER XIX.

30. Section 227 makes pasturage, forest, and fishery rights recoverable in the same way as arrears of rent. This section appears quite adequate to meet the requirements of the case.

31. There remain the points raised in paragraph 2 of the Government of India's letter. Point 2 is one to be considered by executive officers.

32. *Point* 3.—Whether the modified putni procedure can be made applicable to arrears of road cess and public works cess from rent-free tenureholders. This, too, appears to be a question more for Collectors than Judges to deal with.

33. *Point* 5.—Whether the saving of customary and other conditions specifically applied in section 214 of the revised Bill to utbandi and halhasili tenures should be extended to similar tenures under other names, and whether any special saving is necessary in regard to special tenures under which land is held in the Chittagong Division. An *utbandi* tenure, as I understand it, is a tenure under which the cultivator pays rent only for the land actually cultivated by him in each year. In a *halhasili* tenure the rent varies with the crops. Such tenures are prevalent in many villages in Behar, although they may not be known by these names, and I have no doubt that if a close enquiry were made, many tenures would be discovered which are governed by some local custom. I think that the provisions of section 217 will enable the courts to deal with any such customary rights.

36. *Point* 6.—Whether it would be possible to specify for the purpose of exception from the pre-emption sections any such transferable occupancy rights as those in *guzashta* and gora holdings. I think it would be extremely difficult, if not impossible, to do so. All these tenants of such holdings would apparently fall under the definition of tenureholders, and under the revised Bill as it stands the landlord would not have the right of pre-emption in the event of transfer.

35. I have now given as briefly as possible my opinion on the questions raised in these papers. I understand that it is not proposed to introduce the revised Bill into the Chota Nagpore Division, and I have not therefore touched upon the peculiar tenures of this part of the country to which I do not think the revised Bill would be in any way applicable.

36. In conclusion I may add that I have carefully refrained from expressing any opinion on the principles of the Bill, as I have not been asked to do so; but I may be permitted to say that the Bill as it stands appears to me too drastic and elaborate a measure to be easily worked. It will, I am afraid, give rise to much litigation, and will cause considerable dissatisfaction among the landlords, without very materially improving the condition of the tenants.

37. The intricacy of the measure will in a great measure defeat the objects for which it was framed. The main grounds for passing the Bill are, first, to faciliate the collection

of rents by the landlord, and, second, to improve the condition of the tenantry by giving them fair rates, fixity of tenure, and free sale.

38. Of the three Fs, fair rents are the most important to the ryots. It is doubtful whether their position will be improved by giving them free sale, and I think that some of the provisions of the Bill, which deprive both landlords and tenants of the right of free contract, are open to serious objection.

39. A short Bill giving the local Government power to interfere in cases of dispute between landlord and tenant, drawn in the lines of chapter X of the revised Bill, some provisions to settle questions in the case of produce rents (sections 81 *et seq.*), a competent and trustworthy settlement department to adjust rents and record rights when required to do so, and some provisions to facilitate the collections of rents by the landlords and to compel them to keep proper accounts and grant proper receipts would be enough at present to protect the interests of all parties.

40. Lastly, I must express my regret that in consequence of my absence for three weeks, holding sessions at Hazaribagh and Purulia, I was unable to submit this report earlier.

J. E. S.—Reg. No. 6234C—351—2-9-84

No. 22, dated Burdwan, the 31st July 1884.

From—BABOO MOHENDRO NATH MITTER, Subordinate Judge of Burdwan,

To—The Officiating Secretary to the Government of Bengal, Revenue Department.

WITH reference to your printed circular No. 5T—R, dated the 28th May last, together with the enclosures forwarded therewith, relating to the revised Bengal Tenancy Bill, I beg most respectfully to submit the following observations for the consideration of His Honor the Lieutenant-Governor of Bengal.

2. Let me premise by stating that the Bill, as originally framed or revised by the Select Committee is opposed to the main principles embodied in the existing land law of the country, is not required in the present state of society either in the interests of the landlord or his tenant, is revolutionary in its nature as overturning their mutual relations, and will, when passed into law, sow the seeds of discord and dissension, and produce a crop of litigation for years to come. The well meant policy of the Government and of the Legislature will be entirely frustrated, and a state of things will be called into existence by the sheer force of law for which every wellwisher of the country will have to regret

3. The definition of ryot in section 5 (3), chapter II of the Bill, does not cover all classes of ryots A person may be a ryot although he may not hold land either immediately under a proprietor or tenureholder. "Proprietor" in chapter I, section 3 (2), means a person or a number of persons owning an estate, and "estate" in section 3 (1) means land included under one entry in any of the general registers of revenue paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of the district. An unregistered lakhirajdar is neither a proprietor nor a tenureholder as defined in section 5 (1). It follows therefore that the definition of ryot in section 5 (2) does not include ryots holding lands under unregistered lakhirajdars. Then, again, ryots in Government khas mehals do not come under the definition, nor are their rights and liabilities dealt with in this Bill. The presumption in section 5 (5) is not I think a fair presumption In fact there cannot be any presumption of the sort, unless a holding be extraordinarily large, say, exceeding 500 or 1,000 bighas. A jotedar whose holding exceeds 100 bighas is a jotedar still, whether he sublets the whole or part of it or not. He cannot by any act of his, subsequent to the acquisition of his holding, be converted into a tenureholder. In determining whether a tenant is a tenureholder or a ryot, regard should be had to the original nature of the tenancy, *i.e.* to say to the primary object for which the tenancy was acquired, and to local custom, if there be any. The conversion ought not to be made by an arbitrary rule detrimental to the interests of the landlord.

Vide Board's rules, volume I, page 137, and the proviso to clause I, section 3 of the Bill.

4. The provision as to the conversion of the subletting occupancy ryot into a tenureholder (section 37) is also arbitrary, and not favoured by custom. It will, moreover, be found to be unworkable In the first place, it will be difficult to ascertain whether the portion of his holding sublet by an occupancy ryot exceeds more than half of his holding. Secondly the proviso to section 37(*a*) will cover all sorts of cases so as to render the section inoperative. It is said that the objects of this section are to discourage the purchase of occupancy holdings by money-lenders, to protect the underryot from undue enhancement of rent, and to facilitate the acquisition of occupancy rights by him. But these objects are likely to be frustrated when it is borne in mind that the advantages of the tenureholders under the Bill are decidedly superior to those of an occupancy ryot, and the exposure to the summary sale procedure of chapter XVI will not act as a sufficient deterrent in the purchase of occupancy rights by money-lenders. So far as I know, I believe it is a fact that there are no money-lenders pure and simple in rural Bengal. You cannot shut them out as a dreaded class. They are either tenureholders, joteders, or ryots having rights of occupancy An occupancy ryot therefore who is also a money-lender can turn himself into a tenureholder at his own will and pleasure. On the other hand, an occupancy ryot not a money-lender who sublets more than half his holding may remain an occupancy ryot still, and evade the summary sale procedure by not registering himself in a public register. It will not be to the interest of the landlord to see him converted into a tenureholder, nor will it be his own interest to change his status, and thereby expose his tenure to summary sale, so that in either case section 37 will be a dead letter.

CHAPTER III.

5. In deciding what holdings are and what are not tenures, the provisions of the Bill requiring the court to enquire into the nature of the right of tenancy as originally acquired, whether for collecting rents or for cultivating the land, and the custom of the place, are sufficient to help it to arrive at a correct conclusion. As to enhancement of rent of tenureholders, section 6 of the Bill lays down rules taken from Regulation 8 of 1793, section 51, which cannot be objected to ; but there is no necessity for providing for the enhancement of a tenureholder's rent up to double the rent previously payable (section 8), or for a gradual enhancement not exceeding five years (section 9) ; nor should any limit of period be imposed during which enhancement once obtained cannot be repeated. As it is, cases of enhancement of

rents of tenure holders are seldom brought in our courts: their rents are generally fixed in perpetuity. These provisions therefore will be of no practical utility. They will simply create discontent among the zemindars.

CHAPTER IV.

6. There can be no doubt that the 20 years' presumption rule introduced by Act X of 1859 is one of the most valuable provisions in the interests of the ryots, entitling them, as it does, to hold lands at fixed rates of rent. It is too late now to argue that that rule was introduced in violation of the terms of the Permanent Settlement. It has existed for 25 years, and worked remarkably well without placing the zemindars under any serious disadvantage. The main objection now urged is that auction purchasers find it difficult in the absence of collection papers to rebut the presumption, and the difficulty will be increased year by year, if the rule, as embodied in section 64 of the Bill, be retained in its present shape. To meet this objection, I think it is fair that the 20 years should be reckoned from before the date of the passing of the present Bill, and not from before the date of institution of a suit. The suggestion of the late Hon'ble Rai Kristo Das Pal on this point deserves consideration.

CHAPTER V.

7. It appears from paragraph 7 of the Government circular No. 3FR, dated the 24th May last, that the definition of the settled ryot is not open to discussion Section 25 of the Bill says that every settled ryot of a village or estate shall have a right of occupancy in all land held by him as a ryot in that village or estate The Select Committee in paragraph 11 of their report advert to the difficulty which may arise in large estates, such as those of the Maharaja of Burdwan, from the status of the settled ryots holding good over the whole estate. As an illustration of this difficulty, I would here refer to the estate of the Maharaja of Burdwan, towji No. 1 of the Burdwan Collectorate, which extends over six districts, viz. Burdwan, Hooghly, Midnapore, Beerbhoom, Nuddea, and Moorshedabad. The Government revenue of the estate is nearly ten lakhs, and it is composed of 545 putni talooks and 92 mukarari tenures. The inconvenience and loss which would result to the putnidars by allowing a settled ryot of a village in the estate a right of occupancy in any land which he may hold in that estate can more easily be conceived than described. A settled ryot of Beerbhoom under putnidar "A" may take land at Midnapore under putnidar "3," and at once acquire a right of occupancy, and if a batch of settled ryots were to go about for land in this way, the putnidars will simply be helpless and be hopelessly ruined. This is not the only instance of its kind. There are several zemindars owning estates extending over more than one district, and they will unavoidably be subject to serious loss if the section as framed be allowed to stand. The same inconvenience and loss would result by permitting a settled ryot of one village to at once acquire a right of occupancy in another. The only means under the circumstances of avoiding these difficulties is to strike out the word estate, and to limit the right to the village only of which a tenant is a settled ryot. In regard to section 29 (I) I think it somewhat conflicts with section 28, and the requirements of the Bill are not sufficiently met by the latter section. Suppose three brothers, one of whom is the landlord, inherit from their father, a ryot having a right of occupancy, his occupancy holding, how would the case stand? The right of occupancy, so far as the landlord is concerned, shall cease to exist, but it shall remain intact so far as the other two brothers are concerned, and the result, supposing the holding to be undivided, would be anomalous The converse case of an occupancy ryot buying or inheriting a share in the estate in which his holding is situated may be met by section 29(I).

8. The main question regarding the incidents of the right of occupancy is its transferability. In theory the right to transfer an occupancy holding depends upon local custom, but in practice that custom is recognized by our courts almost everywhere, and it is useless now to argue that such a provision as is embodied in clause (*f*), section 31, will injuriously affect the zemindars. They are daily bringing occupancy rights to sale in execution of decrees, and it does not lie in their mouth to say that such rights are not transferable. The apprehension that if money-lenders become the purchasers they would rack-rent their undertenants is more imaginary than real. I have already observed that money-lenders are not a distinct class indifferent to the agricultural prospects of the country. They form a component part of the agricultural community. They are themselves jotedars and cultivators, and it is desirable that their capital should be brought to the promotion of agriculture. Rack-renting there is none in Burdwan. The late malarious fever has depopulated many parts of the district; large tracts of land are lying waste, for which their owners would be too glad to have tenants at moderate rates of rent. So far as this district is concerned no check need be imposed on the power of the purchasers to rack-rent their undertenants. The right of pre-emption granted to the zemindars will operate as a safeguard against the intrusion of hostile tenants into their estates. My remarks on clause (*b*) will come under the chapter on improvements. Clause (*g*) treats of the occupancy ryots' right to sublet his land or any part thereof subject to the provisions of sections 37 and 38. I think there ought to be no restrictions on subletting. I quite agree with the Hon'ble Mr. Gibbon that the power to sublet is a necessity to the ryot, and it would be unwise and impolitic to place it under any restrictions. The practice prevails from time immemorial, and no evidence has been brought to shew that it has produced baneful results. On the contrary, it has saved poor families from misery and ruin, and brought food to the

labouring class. But for this practice half the culturable lands of the province would have lain waste. The ryots of Bengal are mostly notoriously poor, and have not the means of cultivating their lands with hired labour. They sublet and thereby utilize their resources, and the sublessees, too, who are poorer, utilize their labour, and in the end the country gains in wealth.

9. In my humble opinion the subject of the enhancement of rent of occupancy ryots has not been successfully dealt with in this Bill. One of the avowed objects of fresh legislation is to remove the complaint of the zemindars that enhancement under the present law has come to a dead-lock. That object the Bill has failed to accomplish, while it has introduced novel provisions which, being quite unnecessary and uncalled for, have filled the country with strange misgivings. The grounds of enhancement of rent by suit are as follow:—

(*a*) That the rate of rent paid by the ryot is below the prevailing rate payable by occupancy ryots for land of a similar description and with similar advantages in the vicinity.

(*b*) That there has been a rise in the average prices of staple food-crops in the locality or at the usual markets.

(*c*) That the productive powers of the land held by the ryot have been increased by an improvement effected by or at the expense of the landlord.

(*d*) That the productive powers of the land held by the ryot have been increased by fluvial action.

The first ground is the same as the first ground of the present law. It is difficult to make out what is the prevailing rate. The pergunnah rate is now a myht. Unless some attempt be made to explain the prevailing rate, and to lay down certain rules how to ascertain it, the same uncertainty that has hitherto proved so perplexing will remain. I do not think that this provision has been generally abused by the production in evidence of collusive or fictitious rates, though isolated cases of the sort have in the course of my experience come before me; but I believe that rates have from diverse causes so varied in tracts of land adjacent to each other that there is hardly any reasonable hope of discovering the prevailing rate. Then, again, the rate payable must be for land of a similar description and with similar advantages. It is not an easy matter to satisfy the requirements meant by "similar advantages;" and, lastly, it has not been explained what area would the word vicinity imply. The second ground of enhancement under the present law has with some alterations been divided into three parts—(*b*), (*c*), and (*d*). No good and sufficient cause has been shewn why the rise in the average prices of staple food-crops alone should be taken into account, and why valuable crops, such as tobacco, sugarcane, potato, mulberry, and jute, &c., should be excluded. The zemindars in this respect will be placed in a worse position than they are now. If price lists prepared by revenue officers are to be the guide of the courts in determining the prices prevailing in any local area, why should they not be made to include the price of all the crops grown in each district, and why in justice to the ryot should not the cost of production be taken into account? Much will depend upon the manner in which the price lists are prepared. They are at present wholly unreliable, and no court of justice can with any degree of certainty or satisfaction base its findings upon such documents. To be useful, they must be prepared by reliable and responsible agents, and they must shew in addition to the average prices of all the crops grown in each district the average produce, and the average cost of production per bigha. The late Hon'ble Rai Kristo Das Pal was quite right in observing that the third ground (*c*) will be of no practical effect, inasmuch as the provisions contained in sections 46, (*b* IV) and (*c*), 48, and 49 will deter landlords from making any outlay on improvements. The fourth ground (*d*) cannot generally be availed of. Its application will necessarily be confined to exceptional parts of the country.

10. The provisions regarding the extent to which enhancement of rent may be had under the Bill cannot be supported. They are inconsistent with the principles laid down in section 43. If enhancement of rent is sued for upon ground (*a*), the rate of rent ought to be raised to the prevailing rate. If enhancement of rent is sued for upon ground (*b*), the rate of rent ought to be assimilated to the result arrived at by working out the rule of proportion. Any other limit would be inconsistent, unjust, and unreasonable. Then, again, there should be no distinction as to extent between enhancements in court and out of court. The limits in both the cases ought to be equalized, and perfect freedom of contract given to the parties to discourage litigation. The policy of legislation should be to encourage landlords and their tenants to settle their own affairs amicably, and foster habits of self-reliance among the latter class. The ryots of Bengal are now well able to assert their own rights. They know how to unite and resent any act of oppression on the part of the zemindars. Any provision to protect them against themselves would be demoralising The best safeguard against coercion, imposition, or fraud is registration of their contracts, and that the Bill has already provided for.

11. I think that the effect of section 42 will not be so dangerous as His Honor the Lieutenant-Governor seems to suppose. It will be the interest of a settled ryot to take land at an advantageous rent, or at any rate at a rate of rent approximating the prevailing rate, if there be any. It would not be just to the landlords to fetter their powers when they relet their lands, and the apprehension that the new rates will of a sudden tell upon the prevailing rate is not based upon any ascertained state of facts. Gradually in course of time as the

value of land increases the rates will be raised, and the parties interested might be safely left to make their own bargains.

12. The *bastu* question referred to in paragraph 12 of the Government circular to Commissioners is no doubt one of great importance. If any leniency or tenderness is required to be shewn to the ryot, it is required here. Ordinarily homestead land, which is raised above flood-level, is let at a higher rate of rent than arable land. If it is part of a holding, it is subject to the incidents attaching to the holding as a whole. There is no practice of exempting, under any circumstances, the *bastu* land from sale, when the occupancy right in the arable portion of the holding is sold in execution of a decree; but it generally happens that the sold-out tenant retains his *bastu* as a sublessee of the purchaser at a higher rate of rent than what he paid before the sale. When a ryot holds his homestead otherwise than as part of his holding as a ryot, it is subject to the conditions of his contract, or if there be no contract, and the land is taken for building purpose, the tenure is implied to be permanent and transferable, unless there be any custom to the contrary. I think the right of an occupancy or non-occupancy ryot to his *bastu* ought to be guarded against unnecessary interference on the part of his landlord. I am not prepared to advocate its exemption from enhancement altogether, but such enhancement ought to be regulated on the principle of the prevailing rate payable by ryots of a similar class for similar lands in the places adjacent.

13. Under section 51 (*a*), an occupancy ryot may claim a reduction of his rent on the ground that the soil of his holding has without his fault become permanently deteriorated by a deposit of sand or other like calamity. The present law enables him to claim a reduction on the ground that the productive powers of the land have been decreased by any cause beyond his control. The proposed change in the wording of the present law will not, I think, be for the better. The officer deputed to hold a local enquiry will find it difficult to report whether the soil of a holding has become *permanently deteriorated* by a deposit of sand or other like calamity. The present law is simple, intelligible, and comprehensive, and no difficulty whatever is felt in administering it.

CHAPTER VI.

14. The provisions embodied in this chapter will, I am afraid, prove detrimental to the interests of the landlord and the non-occupancy ryot alike. The tenant-at-will is now dealt with by the landlord at his discretion. While much of that discretion is taken away with the object of improving the status of the tenant, that object is not gained by the novel five years' lease at a judicial rent, which places the tenant in a worse position than he is under the present law. Friendly feelings will no longer exist between the parties, short leases will become the rule, and a tenant-at-will will be ejected at the expiration of every short lease, and remain a tenant-at-will all his life. Not so is the case now. Tenants-at-will are allowed to, and do generally, acquire rights of occupancy; where is then the necessity for this change? where is the improvement?

15. So far as I am aware, the rate of rent of a non-occupancy ryot is not the same as that of an occupancy ryot, and equality of occupany and non-occupancy rates cannot be supported by existing custom. It has not also come to my knowledge that the local custom in any way recognizes some right in a ryot to his holding, although he has not held it for 12 years, and so acquired a right of occupancy.

CHAPTER VII.

16. The limitation of underryots' rents would not be fair to their landlords. It is difficult to say how far it would be effective in practice. As to short subleases, it would not have the effect of checking the practice of subletting.

CHAPTER VIII.

17. The rules regarding receipts and accounts and the forms prescribed for them, as well as the rules relating to the deposit of rent, are certainly an improvement on the present law. I would only suggest that clause (*b*) of section 73 be omitted; clause (*a*) will satisfy the purpose to meet which clause (*b*) is made.

CHAPTER IX.

18. The provisions regarding improvements are not required in the present state of the country, and far from serving any useful purpose, they will only disturb the relations between the landlords and their tenants. In the face of the several restrictions imposed upon their capacity for making the improvements enumerated in section 87, the landlords would not be foolish enough to undertake any and be at last at the mercy of the court when claiming enhancements As for the tenants, an improvement within the limits of their capacity and in their way of thinking means a hut and a cowshed. There will all improvements end, and the result would simply be deplorable.

19. The provisions of section 96 are not calculated to promote the exercise of arbitrary power on the part of the landlord. The right of suit given to the ryot in section 96 (3) will deter him from abusing his power.

20. The measurement of lakhiraj lands ought to be limited to a survey of external boundaries only, and it ought to be made according to the officially-determined local pole.

21. The difficulties caused to the ryots by disputes among co-owners of an estate or tenure are sufficiently met by the rules regarding deposit of rent. The appointment of managers by the District Judge in cases where inconvenience to the public, or injury to private rights, is apprehended will dishearten the landlords, impoverish them, and eventually make them unfit for the management of their own property.

CHAPTER XI.

22. The table of rates contemplated in this chapter will be of no practical utility. It will be difficult to prepare these tables with any degree of accuracy. They will only lead to endless objections, and cause much harassment, trouble, and expense to the people.

CHAPTER XII.

23. So far as the practice goes, cultivation is not a necessary condition of the land being *khamar*; waste lands not let by a proprietor are also considered to belong to that class.

CHAPTER XIII.

24. The chapter on distraint is an improvement on the present law. I am not for abolishing distraint altogether. The supervision of the court would be a perfect safeguard against abuse of the power, and if timely application be made, there would be no fear of the process being deprived of its practical utility.

CHAPTERS XIV AND XV.

25. I have gone through the procedure chapters carefully, and it appears to me that the provisions embodied in sections 163, 165, and 168 will have the effect of expediting the disposal of rent suits. It is difficult to suggest any other modes of service of summons than those already provided, which do not involve a risk of failure of service. The amendment made in section 164 as a whole is not much desirable. It will have the effect of encouraging the institution of title suits, and considerably delaying the disposal of cases for arrears of rent. I would strike out clauses 2 and 3, and say that, upon payment into court of the money so admitted to be due, the court shall take cognizance of the plea; but nothing in this section shall affect the right of the third person, to whom the rent is pleaded to be due, to recover from the plaintiff money paid to him by the court. It will thus be seen that the omission of the two clauses will not affect anybody prejudicially. The plaintiff will have to prove his case. If it be a fact that the rent is due to a third person, the case will be dismissed, or if justice be defeated by false evidence, the plaintiff will remain liable to the third person for the amount drawn by him. On the other hand it will be no hardship to the defendant to pay the amount admitted to be due. He will not be made to pay twice, and a provision to that effect might advantageously be inserted. The third person also will have his right of action against the plaintiff, who in the generality of cases will be a more substantial person than the defendant.

26. I do not approve of sections 169, 170, 172, and 174, but as they form a necessary part of the Bill as framed, they must be retained if the Bill passes in its entirety.

27. In modification of the present procedure, I would humbly submit for the consideration of His Honor the Lieutenant-Governor and the Select Committee a proposal which may at first sight appear startling. I may be singular in this suggestion, but, nevertheless, it will, I venture to state, prove extremely useful. If legal practitioners be not permitted to appear in cases for arrears of rent not exceeding in amount one hundred rupees, much may be done in the way of simplifying the procedure and expediting the disposal of those cases. A provision might be made on the lines of section 68 of "the Dekkhan Agriculturists Relief Act, 1879." Let the landlord appear by his gomasta and the ryot in person or by an adult member of his family. If the parties meet face to face before the court without the intervention of any vakil or mukhtear and are examined, I can say with some decree of confidence that in nine cases out of ten rent suits will be disposed of on the very day they are called on for hearing. In cases the value whereof exceeds in amount one hundred rupees, and in cases for enhancement of rent, or where a question as to title to land or to some interest in land is raised, legal practitioners may appear. To meet the objection that inexperienced munsifs might in the absence of professional assistance make blunders in simple rent cases, I would suggest that they be tried by munsifs of the first and second grades, or the first, second, and third grades. This change will bring about all that is required either in the interests of the landlords or the ryots. It will simplify matters a good deal, secure speedy disposal of business, and save harassment, trouble, and expense.

28. In regard to execution of decrees, I would suggest that the process of attachment previous to sale be done away with. The object of attachment is to prevent alienation. The landlord has a lien upon the land for his rent. The rent of land is a first charge upon it. The process of attachment therefore is useless. It only causes delay. A month's time may be saved if this process be dispensed with. It may also be provided that a claim in execution shall not be heard, unless the decreetal amount be deposited in court by the claimant, and in the event of the claim being allowed, the court shall have the power to refund the money deposited and to award such further sum to be paid by the decreeholder, as well as compensate the claimant for the loss he may be put to in making the deposit.

CHAPTER XIV.

29. The putni law ought not to be incorporated in this Bill. The zemindars are right in saying that that law has received so many constructions, section by section, from the highest court of the country and from their Lordships of the Judicial Committee, that it would be unwise to modernise its language and bring about uncertainties which do not now exist. It is fully understood by those who are affected by its provisions, and it is therefore desirable that it should be left untouched.

CHAPTER XVII.

30. I have already observed that perfect freedom of contract should be allowed to the landlords and their tenants. It is allowed by the present law. The matters enumerated in section 210 should not be placed beyond the reach of contract; but provision might be made that such contracts shall not be binding unless they are registered.

31 The remaining chapters do not call for any special remarks. Section 227, chapter XIX, will sufficiently meet the requirements of the cases referred to therein.

32. The above brief observations are confined to the main features of the Bill, and I regret that my regular duties have not afforded me sufficient leisure to discuss them more fully or to enter into details.

J. E. S.—Reg. No. 4899C—315—4-8-84.

Dated the 26th July 1884.

From—BABOO NUFFER CHANDRA BHATTA, Second Subordinate Judge, 24-Pergunnahs,
To—The Secretary to the Government of Bengal, Revenue Department.

IN reply to your circular letter No. 5T—R, I have the honour to submit the following few remarks on some of the provisions of the Rent Bill in order of the questions put in the letter to the Commissioners of Divisions (circular No. 3T—R.)

CHAPTER II.

(*a*) The definition with proviso in clause (3), section 5, does not seem to cover ryots holding under unregistered lakherajdars, as unregistered lakheraj does not come within the definition of "estate," a holder of which is alone to be a "proprietor" by clause (2), section 3, under whom the tenant must hold in order to be a "ryot." Unregistered lakheraj does not come within the definition of a tenure.

(*b*) It would be a fair presumption as against the tenant at the instance of a sub-ryot or the landlord, but not a fair one at his own instance in his favour and against his landlord, when he wishes to convert the holding into a tenure, sub-letting being his own act. I think it is a mistake to suppose that the ryots do not covet the position of tenure-holders.

(*c*) In every contested case it will require a local enquiry and measurement—an expensive affair. The object, in my humble opinion, might be far more effectually secured, and many of the objections of the landlords removed, if instead of converting the holding into a tenure, it were declared that, if other conditions of sections 24-26 are fulfilled, the sub-lessees shall acquire right of occupancy as against the holder, but subject to pay a different rate of rent. The holding would otherwise remain a simple occupancy holding so far as the landlord is concerned, for he does not wish, as appears from Hon'ble Krishna Das Pal's observations, to see the holding converted into a tenure; so that his right of pre-emption and distraint would remain intact, while the fear of distraint of his crops for the arrears due from the superior ryot would deter a cultivator from easily taking up land under an occupancy ryot.

The most effectual means of preventing money-lenders from purchasing occupancy holdings would seem to be to declare that, if after passing of the Bill, the purchaser of an occupancy holding sub-lets more than half the land, he ceases to be an occupancy ryot. As the landlord would cease to be so *ipso facto*, there will be no injustice done to a money-lender in such a declaration if, in the face of that, he wishes to purchase such holdings which are mainly intended for actual cultivators; yet it will leave ample scope to the petty village mahajans, who are often themselves cultivators with hired labour, to invest their capital that way, and occupancy holdings shall not be wholly valueless for want of competitors in the market.

CHAPTER III.

No hard-and-fast rule can, I fear, be devised to determine which holdings are tenures and which are not. The matter should be left as hitherto to the evidence of the original intentions of the lease, the social position of the holder, the intermediate transfers, if any, made and recognized, the actual use made of the land that is, whether cultivated or sub-let the area of the holding, and the like.

CHAPTER IV.

The 20 years' presumption indeed works injuriously, especially as against auction purchasers. Since the passing of Act X of 1859, it is now nearly 25 years; so that the owner of a holding that was created even within five years of the passing of that Act may now claim the presumption. In order to obviate this absurdity, the period should be increased to say 30 years, so that it may be put beyond all doubt that the holding was in existence at least some time before the passing of that Act. If a landlord left the rent of a holding untouched these 30 years of rent disputes, it may be safely presumed that the tenure existed from the time of the Permanent Settlement at an unvaried jumma. If again steps be taken to pass a law requiring registration of such holdings as contemplated in the proviso to section 64 of the Bill, many of the objections will be removed, though like the Land Registration Act it will give rise to some litigation at first, but once for all.

CHAPTER V.

Section 31 (*f*). See my observations under chapter II(*c*) (12). In places like Vikrampore in the Dacca district, subject to annual inundation, bastee or bari is very valuable indeed. It has to be considerably raised above the ordinary flood-level, and improvement have to be made from generation to generation. On the equitable ground of "stand by,'s such bastee lands may be at once declared transferable and non-enhanceable except on the' ground of prevailing rate.

CHAPTER VI.

Before Act X of 1859, there was hardly any difference in the rates payable on account of the same kind of land paid directly to landholders, as occupancy holdings of the regulations were very few. Section 18 of the Act, however, made "the prevailing rate

payable by the same class of ryots" a ground for enhancing the rents of occupancy holdings, whose numbers were vastly increased by the retrospective effect of section 6, and the words "some class of ryots" were interpreted to mean "occupancy ryots." Thus where a difference existed owing to some accident, it was stereotyped, and a possibility of difference was suggested everywhere, generally to the detriment of non-occupancy ryots. Since then any general increase of rent, however slight, payable by all classes of ryots, so as to yield on the aggregate a respectable sum by any amicable means, being out of the question, the landlords fell upon the non-occupancy ryots and increased their rent. No new ryot hoped to get land at the old rate. Thus when those non-occupancy ryots and the new-comers became occupancy ryots in their turn, evidence of a higher prevailing rate was obtained for purposes of enhancing the rents of those ryots who had suddenly acquired the right of occupancy by the retrospective effect of section 6 of Act X of 1859. In some places, as in Behar again, any further growth of occupancy right was prevented by not allowing a non-occupancy ryot to hold the same plots of land for any considerable number of years. The same difference in rate is retained in the present Bill, section 43, clause (*a*). If, however, there is to be no difference in rates payable by occupancy and non-occupancy ryots, the rates now paid by the latter should be taken into account in determining the prevailing rate in enhancing the rents of the former. It is now therefore almost hopeless to put a stop to the difference already grown, or to prevent competition rate where ryots seek land, and not *vice versâ*.

CHAPTER IX.

Section 101.—The measurement should be according to the standard pole of the place, and then converted into English measure, if necessary, to prevent all misunderstanding.

CHAPTER X.

The revenue officer should be empowered to refer cases to the civil court as under the Land Registration Act, either at his own instance or at the request of any of the parties. In cases of undisputed entries, the records should be *primâ facie* and not conclusive evidence of the facts if disputed, say within three years, and after that period should be conclusive, if it is not shown that by fraud or collusion the party complaining was kept in ignorance of the matter.

CHAPTERS XIV AND XV.

I think the landlords should be allowed to bring collective suits, though in cases of dispute, separate trials may be necessary as far as defence is concerned; in some cases it will be advantageous to both parties. Several ryots will be present in court at once to assist each other with advice and evidence without being cited for the purpose. By making a common cause they may engage the services of a good pleader or legal adviser.

No such custom as stated in paragraph 3 of the letter came to my notice.

C E. G.—Reg. No. 4537C—313—28 7-84.

No. 125, dated Khulna, the 31st July 1884.

From—Baboo Bhagwan Chandra Chakrabarti, Subordinate Judge, Khulna,
To—The Secretary to the Government of Bengal, Land Revenue Department.

I have the honour to submit herewith the report called for in circular No. 5T—R, dated Darjeeling, the 28th May last.

However much it may be desirable to exempt *bastu* lands from sale when the arable portion of the holding is put up for sale in execution of a decree, I do not know of a single instance within my jurisdiction of such exemption. So far as my knowledge of the district goes, I do not see any practice prevailing or custom existing to secure such exemption. When *bastu* land is held under a separate tenure, it may be exempted from sale, and when it forms as an integral portion of a tenure, it may be protected from enhancement on the ground that it has improved at the expense of the ryot. The wording of section 216 is so general that it will be hardly practicable.

Every village—nay every *parah*—may set up a custom of its own, and so the objects of the section will be frustrated. Looking at the other side of the question, difficulty will be felt if the unsaleable character of *bastu* lands be assumed. The ryot may often withhold payment, knowing for certain that his sacred *bari* will not be put up for sale. I would therefore humbly suggest that *bastu* lands held under a separate title, or as a separate tenure, should have attached to it all the incidents of a *mokarari mourosi* tenure. It is a sufficient concession to the ryot to hold *bastu* land as a portion of a tenure exempt from enhancement.

It is almost of every-day occurrence here at Khulna to see a *jamma* owned by even a common *banuah*, who, as a rule, is a mere squatter, sold and transferred from hand to hand. Such is also the case with *jotes* of Rungpore, where the very name of a *jote* will make it transferable. In this connection, the question of right of pre-emption arises. Whether by giving right of pre-emption to the zemindar in such a case the evil will be greater than good; whether if such sales be not checked *sub-infeudation*, which is already rampant in the country. will be increased, and thus the speculative money-lenders will get a good harvest; or whether by repressing such sales value of property will be deteriorated. Such sales are the outgrowth of time, and it is not in the power of zemindar to repress them, nor would it be to his benefit to do so. But it is not time to make them free. They should, in my opinion, have certain check in the way of giving the right of pre-emption to the zemindar, otherwise the whole of land will gradually fall in the hands of the speculative money-lenders. All things considered, I think this is the lesser of the two evils, unless the zemindar, as a class, be so silly as to deteriorate their own property. Section 37 was introduced with the twofold object of bringing the sub-letting ryot under the more summary sale procedure of chapter XVI, and at the time of allowing the sub-tenant to acquire occupancy right, and thus placing restrictions on sub-letting. But considering the better position the sub-letting ryot will acquire, the provision instead of being repressive, will in a great measure facilitate sub-letting. Besides, it will not work. The complicated condition of the conversion will be a serious question for the court to decide in a simple rent-suit, and whether the registration will be complete is a very doubtful matter, since it will be very difficult to ascertain whether a man has sub-let half of his holding. The 20 years' presumption—the creation of Act X—has, as far as my experience goes, worked to the great detriment to the zemidars. But its removal from the Statute Book would work very prejudicially towards the ryot by throwing burden of proof on them. I would humbly suggest that presumption would cease to operate as soon as tenancy registers are prepared: of course limit of time should be given.

The Bill has no doubt simplified the procedure, but it requires still greater simplification. I would humbly suggest at the outset that in suits for simple realization of rent the Small Cause Court procedure be adopted and followed, which will no doubt effect speedy realization of rent, which is the main object of the Bill. Now, how the summons is to be served, and what service will be sufficient. Personal service in all cases is impossible, and any substituted service will be loudly complained of. But from my own experience I know non-service is a mere fiction. It is a mere formal objection resorted to by the defendants in order to take advantage of the loop-holes of law. I think service of summons by registered postal cover in the case of ignorant Bengal tenant will be of little avail, and the ordinary procedure now existing for the service of summons will be sufficient. As regards appeal I submit munsifs of first and second grade should be vested with the powers to try suits up to Rs. 100 and Subordinate Judges and Judges up to Rs. 500 without appeal.

The idea of having in one suit all the tenants in a village before the court is simply impractible. It cannot but embarrass a judicial officer to hear in one rent suit 50 different defences, and to decide 100 different issues between different parties.

Section 164 is a move in the right direction, but I think the saving clause (4) is quite unnecessary: The reason is obvious. Positive enactment on such a subject will lead to many mischiefs, while omission will not deprive any party of his right. If such a measure finds a place in the Statute Book, there will be no end of litigation between ryots colluding with third parties or supposed third parties and the landlord.

The division of jurisdiction between civil and revenue courts should, in my humble opinion, be done away with. The officer helping the court in investigating judicial issues should be placed under the District Judge instead of under the Collector, for otherwise the real work will be hampered. The officers under the Collector cannot often obey the orders of the court

The repression of " freedom of contract " has been still maintained in the Bill, " notwithstanding any contract to the contrary." This is contrary to the principles of the law of contract, and is a too great interference with the freedom of parties. The reasons assigned for such a measure are that zemindars as a body are so powerful that they can induce or coerce poor ryots to enter into wrongful contracts. There may be no doubt oppressive zemindars who, by illicit means, might induce the ryots to enter into illegal contracts. But such instances are rare, and it cannot be said that a practice of getting into illegal contracts obtains, as a rule, throughout the country. If there be small class of ryots who might be induced to enter into wrongful contracts ("should principles of equity be sacrified for the protection of that small minority"), I humbly think that such a saving clause is not necessary Besides if the freedom of contract be repressed altogether, somehow or other it may burst out in another, and probably in worse direction.

The provision as to distraint does not appear to be an improvement on the present rent law. Any delay in resorting to these measures occasioned by the elaborate procedure laid down deprives it of its utility. Sub-section 3 to section 141 provides that " where a court cannot forthwith admit or reject an application under sub-section 2, it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application, pending the execution of an order for distraining the same or the rejection of the application." The *interim* order as laid down in this section is calculated no doubt to prevent delay, but in order that it may produce the desired effect, the law on the subject should, in my humble opinion, be made imperative and not permissive merely.

J. E S -Reg No 4966C—327—6-8-84.

Dated Krisnaghur, the 2nd August 1884.

From—Baboo Amrita Lal Chatterjee, Subordinate Judge of Nuddea,
To—The Secretary to the Government of Bengal, Revenue Department.

With reference to the land revenue circular No. 5T. R., dated the 28th May last, I beg most respectfully to submit the following observations on the revised Bengal Tenancy Bill.

CHAPTER I.

Definitions.

The word proprietor means a person or a number of persons owning an estate. An estate, again, means land included under one entry in any of the several registers of revenue-paying lands and revenue-free lands prepared and maintained under the law for the time being in force by the Collector of a district.

I think there is no register kept by the Collector of revenue-free lands of small dimensions. Owners of such revenue-free lands will not, therefore, come within the meaning of the term proprietor (clause 2, section 3 of the Act).

A person holding land immediately under such an owner will not in consequence be a ryot within the meaning of section 5 of the Bill (*see* clause 3). The definition, therefore, requires amendment.

CHAPTER II.

Section 5, *clause* 2.—Does cultivation include horticulture and pasturage, &c.? If not, what would be the position of a person who has acquired land for such purposes?

The provisions contained in section 227 do not seem to me to be sufficient.

Clause (*b*), *sub-section* 4 *of section* 5.—It appears to me extremely doubtful if the object in view will be attained by the provisions of section 37 of the Bill.

The enactment of paragraph 1 of section 37 of the Bill will, I think, serve no useful purpose. Instead of operating as a check on sub-letting and rack-renting by occupancy ryots, the provisions of this section will supply such ryots with the means of rack-renting the actual cultivators of the soil.

To my mind, the only effective way of offering a check upon sub-letting and rack-renting will be to rule that, if an occupancy ryot sub-lets any portion of his holding, except as provided by clauses *a* and *b* of section 37, he will nevertheless remain an occupancy ryot, and will gain no additional advantages by that circumstance; and the sub-lessee under him will gain a right of occupancy with regard to the lands comprised within the sub-lease, but that he will not have the right to sub-let the lands over again, and that the sub-lessee will not be liable to pay a higher rent for such land to his superior landlord than what such superior landlord himself pays for it.

No valid reason, I submit, exists for improving the position of occupancy ryots who might choose to sub-let their lands instead of cultivating the same themselves.

Sub-section 5 —The presumption certainly is an arbitrary one, and is opposed to the state of existing facts in Rungpore. But as some sort of presumption is necessary, and no better can be suggested, I have no objection to retaining it.

CHAPTER III.

Section 6, *clause* 2.—If enhancement of rent in respect of a tenure is demanded on the ground of increase in the quantity of land, it is, I submit, difficult to understand why a reduction of rent granted to a tenure-holder on account of diluvion or for land taken for public purposes shall not be deemed a reduction within the meaning of clause *b* of section 6 (1). Probably section 66 of the Bill will apply to such a case.

Section 8.—The maximum limit appears to me to be too high.

Is it the intention of the Legislature that a firm may acquire a right of occupancy. If not, it should be stated distinctly.

Section 15.—What if the transferor does not join?

Sections 19 *and* 20.—What would be deemed sufficient cause.

CHAPTER IV.

Presumption of 20 Years.

There can be no question that the retention of a presumption of this kind is absolutely necessary for the ends of justice. Without some sort of a presumption of this kind it would be almost impossible for the ryot to discharge himself of the burden of proving the fact that he had held at the same rent from the Permanent Settlement. On the other hand, it cannot be denied that it is oftentimes difficult for the landlord to rebut it if unjustly pleaded, especially where the landlord is an auction-purchaser. It would, however, be doing more injustice to the great body of agricultural ryots if the presumption which has existed as law for about a quarter of a century, and contributed so much to the improvement of that class of the people, were to be swept away from the Statute Book without providing any substitute for it It would not be unfair, however, it if be enacted that a ryot claiming the benefit of the presumption will have to show 20 years' unchanged rate from the date of the passing of this Bill into law.

CHAPTER V.

Section 25.—Probably much complication will be avoided, and no serious inconvenience caused, if the word estate were omitted from this and the corresponding sections of the Bill, and the capacity of a settled ryot to hold on an occupancy title were limited to a village instead of to an estate.

Sections 28 *and* 29.—Probably it would be better to add a proviso to the effect that an occupancy ryot buying a share of an estate, but not the whole estate itself, shall not lose his right of occupancy.

Section 31.—I see no objection to any of the clauses of this section. The principal objection in regard to the purchase of occupancy rights by money-lenders consists in the notorious fact that a money-lender is one of the most exacting of landlords. But the force of the objection will be greatly weakened of it be provided in the Bill that if an occupancy ryot or a transferor under him sub-lets his land, except under the provisions of sub-sections *a* and *b* of section 37, he will gain no additional advantages by that circumstance; but that the sub-lessee will gain a right of occupancy, and will not be liable to pay a higher rate of rent for the lands included in his sub-lease than what his immediate landlord was liable to pay. A sub-lessee under an occupancy ryot should be absolutely prohibited from sub-letting the lands of his sub-lease.

Unless some restrictions of the kind be provided, the right of transfer of a right of occupancy, coupled with the right of sub-letting, will reduce the actual cultivator to the unenviable position so well described by the late Mr. Kristo Das Pal.

ENHANCEMENT.

Section 41.—The ground upon which enhancement is demanded by the landlord and agreed by the ryot must be stated in the contract.

How is the registering officer to ascertain that the contract is in accordance with the provisions of this Act unless the ground of enhancement is stated in the contract provisions of the Act. The sections should be enumerated.

GROUNDS OF ENHANCEMENT.

Section 43.—It is clear that if sections 42 and 62 (9) be retained in the Bill, there will be different prevailing rates for different classes of occupancy ryots, as is pointed out by paragraph 11 of the letter of the Government of Bengal to the Commissioners of Divisions. In that case it will be necessary to provide in ground No. 1 that the rent paid by the ryot is below the prevailing rate payable by occupancy ryots of the same class.

Section 44.—If the words "of the same class" be added after the words "occupancy ryot," I submit no necessity will exist for the provision contained in clause 4 of section 44, that the enhanced rent shall not exceed the previous rent by more than eight annas in the rupee.

Section 42 —It is neither expedient nor desirable that the settled ryot should be bound to pay a higher rent than that which was paid for the land by the previous tenant, except in pursuance of a suit for enhancement of rent under the provisions of this Bill.

Section 45.—With regard to the ground of enhancement for a general rise in prices, it appears to me very doubtful if justice will be done to the ryot if the cost of cultivation and production is not taken into consideration in fixing the rate of rent. The cost of cultivation will also have to be taken into account when reduction of rent is claimed for fall of prices.

Whether the average rise in prices is due to any temporary or casual cause is a point which must be ascertained by the Court before decreeing a suit for enhancement on that ground. If the Court finds that the rise is owing to either of these causes, no decree for enhancement should be passed, unless it were for a single year.

Section 66.—Are not contracts excepted?

Section 84.—Will not a notice by the transferor be also sufficient?

Section 96.—Will the section have effect even when the ryot is a minor?

Section 102.—I submit that the words "inconveniences to the public" are very vague. The inconvenience should be described in the Bill.

The words "injury to private rights" refer obviously to the difficulty which the ryot might find in paying his rent. The inconvenience of the ryot in this connection will be obviated if he will but take advantage of the provisions of section 73 of the Bill. I submit that no sufficient ground exists for the appointment of a manager of a joint estate under ground (6).

JUDICIAL PROCEDURE.

The advantages of a collective suit by one landlord against several ryots by means of a single plaint are to my mind more imaginary than real. The procedure of the Court will not be appreciably shortened by that method. The Court will have to consider such case on its own merits; and if a landlord is allowed to join several claims against several ryots in the same plaint, it is more likely that in the hurry of the business the Court will sometimes confound the case against one ryot with that against another, thereby defeating the ends of justice, and complicating matters which are not themselves complicated. There will therefore be some chance of the ends of justice being defeated in some cases, but hardly any chance of the procedure being shortened. It will be for the Government to see

whether any reduction in stamp duty ought or ought not to be allowed in rent suits. That is a matter which we are at present not concerned with.

I think that it is the general practice in our Courts to fix the hearing of suits by one landlord against several ryots on one and the same date.

Whatever advantages the landlords might expect to get by this arrangement, they already enjoy.

Probably the object may be fully attained by the insertion of a clause in one of the sections of the Bill, or by a circular issued by the High Court to the effect that it will be the duty of the Courts to see that all suits instituted on one day by one landlord against several ryots belonging to the same village should be originally set down for hearing on the same day.

As regards the service of summons, I do not think that the proposal put forward on behalf of the zemindars is either workable or sufficient. How is the summons to be affixed on the piece of matan land in arrears? The village chowkidar and village mandal are exclusively in the hands of the zemindar.

The provisions contained in section 163 (*d*) appears to me to be more practical.

I would only add that when the defendant is a tenant, and has a mal kachari of his own, service of summons on such mal kachari may be deemed sufficient service.

It would be productive of infinite mischief if a defendant is precluded from raising the plea of non-service of summons at all, or only on payment of the decretal amount. I do not know how far the representation is correct that the due service of the summons is systematically denied by the ryots. I do not think that applications for setting aside *exparte* decrees in rent suits are comparatively larger than those in suits for money or moveables. The proposal to deprive the ryot of his right of appeal, except on payment of the decretal amount, appears to me to be particularly unfair. There is no general law prohibiting a party against whom a decree for money has been made from preferring an appeal, unless on payment of the decretal amount. Why should, then, an exception be made against the ryots.

No sufficient ground exists for altering the law in this direction.

Section 164.—The provision contained in this section certainly will work an important and necessary reform. But it is doubtful if it is sufficiently comprehensive. I submit, with great deference, that I entertain great doubts of the practical usefulness of this provision; for the number of cases is very few indeed in which the defendant admits that money is due from him, but pleads that it is due to a third person. The generality of cases are those in which the defendant pleads payment to a third person, on the ground that the rent was due to that third person and not to the plaintiff. It is evident that this section will not apply to such cases. The Bill contains no provision to meet cases of this kind. It appears to me that some sort of provision is, however, necessary for cases like these.

I would submit that in such cases the plea should not, unless for special reasons to be recorded in writing, be entertained if the defendant did not file receipts from such third person of the rent paid.

Questions of title cannot be avoided in rent suits. Such questions must necessarily arise in such suits; and if they do arise, they must have to be decided.

Section 168.—The decision of suits for recovery of rents may be made speedier if special Courts be constituted for the trial of such cases only. I think that if in cases for Rs. 500 and under tried by such Courts where no question of title to land as between parties having conflicting claims hereto, or no question of a right to enhance or vary the rent is decided, the judgment of such Courts be made final, rent suits may be speedily disposed of. If such questions are decided, any party aggrieved by the decree will have a right of appeal as a matter of course.

CHAPTER XV.

In cases of execution of decrees for rent due in respect of transferable holdings or tenures, the holding or tenure should be first put up to sale before the judgment-debtor can be arrested or his other property can be sold.

CHAPTER XVI.

With regard to the *bastu* question, I beg to observe that I am not aware of any practice of exempting the *bastu* land from sale when occupancy right in the arable portion of the holding is put off for sale in execution of a decree; nor am I aware of any isolated instance of any such practice having occurred within my experience.

Having regard to the fact that homestead lands are usually raised above flood-level, and considerable improvements are made upon it by the ryot, it may not be particularly unfair to exempt such lands from enhancement altogether. But I think that the provisions of section 43 (*c*) will practically offer a sufficient protection to the ryot against any unfair claim for enhancement.

I am not also aware of any local custom recognising any right in a ryot to his holding, although he has not held it for 12 years.

I have no doubt in my mind that the provisions of section 210 of the Bill are necessary for the interests of the ryots. But I do not think that the position of the ryot will ever be improved, unless the Legislature interferes between the extortionate money-lender and his debtors, and makes rules by which unconscionable bargains might be more easily set aside and rectified.

W. J —Reg. No. 4964C—327—6-8-84.

No. 8, dated Barisal, the 1st August 1884.

From—Baboo Beni Madhab Mitter, Subordinate Judge of Backergunge,

To—The Officiating Secretary to the Government of Bengal, Revenue Department.

In compliance with the order of His Honor the Lieutenant-Governor of Bengal, contained in your circular No. 5T—R, dated 28th May 1884, I have the honour to submit the following report, which contains my humble views, upon some of the important points in the Bengal Rent Bill.

CHAPTER II.

2. *Section* 5, *sub-section* 3.—Whether the definition of a ryot in section 5, sub-section 3, includes a ryot holding land under a lakhirajdar appears to be doubtful. I therefore beg most humbly to suggest that it would be more explicit if the words "or immediately under a lakhirajdar" were added after the word tenureholder in the last part of clause 3, section 5.

3. *Section* 5, *sub-section* 5.—The presumption under section 5, sub-section 5, appears, in my humble opinion, to be a fair presumption. There are many grades of tenureholders in this district for a long time, and a great number of these under-tenureholders have lost their title deeds and even their rent receipts. It may be seen in our courts very often that these under-tenureholders, being actuated by a belief that they would not be able to prove the existence of their real under-tenure, forge pottahs and dakhilas, and this is one of the reasons why forgery and perjury is so much prevalent in Backergunge. If the onus be thrown on the landlord to prove that the holding is not an under-tenure, the landlord, unless he be an auction-purchaser, will be in a better position to prove it by the papers of his sherista. Then, again, when a complete record of rights will be made, as has been proposed in this Bill, then even the auction-purchaser will not feel much difficulty in rebutting the presumption. It may be urged that in order to have the benefit of this presumption, the actual cultivators will like to sub-let their lands; but I think when the tenants can conveniently cultivate the land, they do not sub-let the land, as the actual gain by cultivating the land preponderates over what he can derive by sub-letting the land.

CHAPTER III.

4. *Section* 7, *sub-section* 3.—The provision contained in the sub-section 3, section 7, appears, in my humble opinion, to be a good one. If the rent is enhanced to such a high rate that the tenureholder does not get even 10 per cent. profit upon the rent collected by him after deducting the expenses of collection, it would be very difficult for him to retain his under-tenure. It may be urged that there are many grades of under-tenures in the district, and if 10 per cent. profit be allowed to each of these middlemen, the zemindar will get very little profit by enhancing the rent. In order to meet this argument, I beg only to mention the cause of the creation of so many under-tenures. Formerly the greater part of this district was covered with juugles, and for this reason the Government revenue of the zemindaries of this district is comparatively very small. The zemindars, in order to get the jungle-covered lands cultivated, granted talukdari pottahs of large quantity of lands; the talukdar spent as much capital as he could and converted a part of the land of his taluk to culturable land, and, in order to get the other parts of the jungly lands cultivated, granted ashut talukdari pottahs of the rest of the lands of his taluk, which he could not cultivate; the ashut talukdar again made a part of the lands of his ashut taluk culturable, and granted nim-ashut talukdari pottah of that portion of the lands of his ashut taluk which he could not make culturable by his own labour and capital, and so on, and thus it may be seen that the greater portion of the jungle-covered lands have been made culturable by the labour and capital of these tenureholders. They were not idle middlemen. The lands have been reclaimed from their jungly state, not by the zemindars, but by the ancestors or predecessors of these middlemen, and under these circumstances, it would be great injustice to make these men starve for the benefit of the zemindars.

5. *Sections* 8 *and* 10.—These remarks also apply to sections 8 and 10.

CHAPTER IV.

6. *Section* 23.—Section 23 is not objectionable. Ryots holding at a fixed rent should enjoy the privileges of a tenureholder as regards transfer of, and succession to, his holding.

CHAPTER V.

7. *Section* 26.—This section will decidedly improve the condition of the ryots. Sometimes landlords let different lands to the same ryot with a view that the ryot may not acquire a right of occupancy, but by the provision of this section that difficulty of the ryots will be removed.

8. *Section* 26, *sub-section* 2.—The provision of this section appears to be very reasonable, for, as a matter of fact, the majority of the tenants have acquired a right of occupancy in the lands cultivated by them; but as most of these tenants are not so prudent as to preserve all

their rent receipts, it sometimes becomes very difficult for them to prove that they have held the land for 12 years as a ryot. This difficulty will be removed by the presumption provided in this section.

9. *Section* 28.—The provision of section 28 appears to be quite new. The doctrine of merger does not apply to this country. Here the zemindar can hold several grades of under-tenures within his zemindari at the same time. If the doctrine of merger be not applicable as regards under-tenures, there is no good reason why it should be held applicable as regards right of occupancy. Then, again, right of occupancy is transferable in the districts of Tipperah, Noakholly, and in the sub-division of Dakhin Shabazpur in this district by local custom; but in those places the same person can be the landlord and the holder of the ryoti right, or the right of occupancy at the same time, and if the superior tenure is sold he may still enjoy the land by his ryoti right.

10. Then, again, in this district, where the system of zimba or selling lands to a powerful man and then becoming his under-tenant is very prevalent, every encouragement should be given to the landlords to purchase the occupancy holdings within their zemindari or tenure as it may be.

11. *Section* 31, *clause* (*f*).—As I have already said the occupancy holdings are by custom transferable in the Dakhin Shabazpur sub-division of this district, and, as far as I know, the ryots of Dakhin Shabazpur are more prosperous than those of any other part of this district.

12. It is very desirable that the actual cultivator of the soil should get some defined and tangible rights to the land which he cultivates; otherwise why should he make any improvement on the land.

13. It may be said that in this district the ryots are very fond of selling their rights to the enemies of their landlords, and that if the occupancy rights be made transferable then the evils of the zimba system, and with it breach of peace, will increase; but I think when the right of pre-emption has been given to the landlords, no such apprehension can be reasonably made.

14. Occupancy rights have become transferable in many districts in Bengal according to local custom. The jotes of Rungpore and Dinagepore are nothing more than occupancy holdings: they are transferable according to the customs of those districts. I have also seen that in some parts of the Burdwan district, as well as in some parts of the district of Jessore, the occupancy holdings are transferable. I have also noticed that the ryots of the district of Nuddea, where the occupancy holdings are fewer in number than in the other districts of Bengal, and where the occupancy holdings are not transferable by local custom, the ryots are in a worse condition than those in the districts where the right of occupancy is transferable. Under these circumstances the occupancy holdings should, in my humble opinion, be made transferable.

15. *Section* 37.—The provision for converting sub-letting occupancy ryots into tenure-holders appears to be a very wise provision, because it will give an opportunity to the actual cultivators of the soil to acquire a right of occupancy, for, as soon as the occupancy holding will be converted into a tenure, the sub-tenant will become non-occupancy ryot, and if he holds the land for 12 years, he will become an occupancy ryot.

16. *Section* 43, *clause* (*b*).—Section 43, clause (*b*) will be beneficial to the zemindars. Hitherto the landlords scarcely succeeded in enhancing the rent of their tenants directly by instituting suits for enhancement, as it is very difficult to prove the existing grounds of enhancement; but the powerful zemindars in some districts succeeded to enhance the rent indirectly by harassing the ryots either by refusing to take rent from them and then by suing them for every kist, or by actual threat and coercion, which was the cause of the formation of jotes or combinations of ryots at first in the district of Pubna, and the example of which was followed by the ryots of Furreedpore and several other districts in Eastern Bengal. Now that the landlords will get a legitimate means of enhancing rent by law suits, it may be expected that they will no longer resort to unfair means. The price lists, however, should be kept very carefully by comparing them with the khattas of the grain dealers. When rent is enhanced under the ground of the rise of price of the staple crops, the rise of costs of cultivation and the rise of the value of the labour should also be taken into consideration, and reasonable allowance should be made for them.

CHAPTER VI.

17. *Section* 60, *sub-section* 9.—In my humble opinion the enhancement of 8 annas per rupee of the previous rent appears to be very high. I think the maximum enhanced rent should not exceed 4 annas, or at most 5 annas, per rupee of the previous rent. The difference between the rate of the occupancy and the non-occupancy ryot should not be made so great.

CHAPTER VII.

18. The provisions regarding the under-ryots in the Bill appear to be fair.

CHAPTER VIII.

19. *Section* 64, *sub-section* 2.—The presumption contained in sub-section 2 of section 64 is not new. It was first enacted in Act X of 1859, and it was retained in Act VIII of 1869 (Bengal Council), and, in my humble opinion, there appears to be no good reason for not retaining it now. Although a small portion of the ryots have now learnt to read and

write, still the great majority of them are, I believe, in the same condition in which they were in the year 1859.

20. *Section* 77, *sub-section* 1.—Hitherto it was doubtful whether the land was hypothecated for its rent. The provision of this section will now remove all doubts on the point.

CHAPTER IX.

21. *Section* 88.—The provision of section 88, conferring right to ryots holding at fixed rent to make improvement, will materially improve the condition of the ryots, and, in my humble opinion, the landlords will be indirectly benefited by it. For hitherto the landlords would make exorbitant demands of fees from the ryots (although they might hold land at fixed rent) for giving permission to make such improvement, and thus put a check to the ryot making any improvement in the land. I know in one instance a suit was instituted before me for filling up a tank which was dug at a considerable expense by his ryot, simply because he did not give the exorbitant fees demanded by him in order to give the permission. The digging of tank in that land increased the value of the land instead of diminishing it. There are many landlords who do not understand that the value of the land is substantially increased by making such improvements, and that they should encourage their ryots to do so when they cannot do it themselves.

22. *Section* 89.—The same remarks apply to section 89.

23. *Section* 93.—The provision for allowing compensation to a ryot for the improvements made by him when he is ejected from his holding appears to be very equitable.

24. *Section* 96, *sub-section* 1.—The provision contained in this section appears to be very reasonable. The ruling contained in the case of Munuruddin reported in page 67, volume 6, Weekly Reporter, appears to support this view. I had noticed last year in the district of Tipperah that many ryots, who had abandoned their holdings five or six years ago, without giving any notice to their landlords, were trying to recover possession of the lands which they had abandoned, simply because the demands of land were increased by the introduction of the cultivation of jute in that district, which had made the lands more profitable than before, and consequently litigation was much increased If these ryots knew what the effect of these abandonments was, they would never institute these suits, or they would never abandon their lands in this manner.

25. *Section* 102.—The provisions regarding the appointment of managers will prove very beneficial to this district. The disagreement among co-sharers has often proved to be a source of breaches of the public peace and oppression to ryots. Whenever there is such a disagreement amongst co-sharers, one co-sharer, in order to have more influence over the ryots, sets up fictitious under-tenures of the ryots, and purchases them himself at a nominal price and then sub-lets the land to the very ryot; in this manner breach of the peace, sometimes resulting in riots, takes place. If proper persons be selected as managers, there will be no fear of any injury either to the zemindar or to the ryot from the appointment of the manager.

CHAPTER XI.

26. *Section* 123, *table of rates.*—The preparation of such a table of rates, as has been contemplated in section 123, will be of great help to the courts in deciding suits for enhancement of rent. There will be some difficulty in this district to prepare such a table, as the tenants will raise objections as regards the quality of their lands; but these difficulties will be easily overcome by an experienced revenue officer.

CHAPTER XII.

27. As far as I know there is at present not a large quantity of khamar or nij-jote lands in this district, but if section 28 of the Bill be retained, the quantity of such lands will increase in future, and record of such lands will be very useful.

CHAPTER XIII.

28. *Distraint.*—In my humble opinion the power of distraint should be at once taken away from the landlords, for, as far as my experience goes, I have never seen any case of distraint in which the power was not abused by the landlord. The good landlords never distrain the crops of their tenants in any district. Only oppressive landlords distrain crops of such of their tenants who do not come to terms with them regarding the rate of rent In these cases the distrained crop is partly spoilt and is partly stolen by the servants of the landlords, and int his way the ryot suffers great damages. Under these circumstances, I beg most humbly to propose that it would be better for the good of the community to take away the power of distraint from the landlords. For the purpose of realizing safely the rents due from the ryots, provisions may be made for attaching the standing crop before judgment, after instituting a suit if the landlord can satisfy the court that if the crop be not so attached it would be difficult for him to realize the rent due from the ryot.

CHAPTER XIV.

29. In my humble opinion the procedure for the realization of rents cannot be made more simple than what has been made in this Bill, unless the Small Cause Court procedure

be adapted to simple rent-suits valued up to Rs. 50, which are contemplated to be tried by judicial officers especially empowered by Government to exercise final jurisdiction under section 168, clause (*b*) up to the amount of Rs. 50.

30. *Section* 163, *clause* (*c*).—The provision of this section takes away the power of the defendant to file a written statement without thele ave of the court. As far as I am aware of the nature of the rent-suits of this district, it will be very difficult for courts to depend upon the oral pleadings of the tenants, and more so for the appellate courts when the case will be appealable; for sometimes I find that in suits for the rent of bastu lands, which are tried in the Small Cause Court, the illiterate defendants cannot state all their objections properly, and sometimes I am obliged to recall the defendant in order to bring out other matters not disclosed before. I would therefore suggest most humbly that at least, as far as appealable rent-suits are concerned, the right to file written statements be conferred upon the defendants.

31. *Section* 164.—In my humble opinion the provision of this section will be very hard for the ryots and their alleged landlords, especially as far as those of this district are concerned. For in this district many persons instead of instituting regular suits for title institute suits for rent, and try to establish their title to the disputed land by a side wind. In such cases if the ryots be obliged to deposit the amount of rent claimed before contending the claim of the plaintiff, it will be at times very difficult for them to deposit the amount. Then, again, the third person or the alleged landlord, who may be in possession of the land, will be obliged to institute a suit against the plaintiff, whereby the onus, which would lie upon the plaintiff, will fall upon him to prove his title. If this section be retained as it is, very probably it will prove a dead letter, for the ryots in such cases will scarcely admit that any rent would be due from him; he will very probably say that the rent has been paid to his admitted landlord

32. *Section* 168.—This section appears, in my humble opinion, to be beneficial both to the landlord and tenant. In great majority of simple rent-suits, appeals are preferred simply to make delay in payment of rent, so the landlords cannot realize their just dues in time, and the ryots at the end are generally saddled with heavy costs of two or three courts, together with interest, without any good effect.

33. *Section* 170.—The provision for relief against forfeiture of tenancy is very equitable.

34. I do not think it necessary to make any observation regarding the remaining chapters, as I do not think that the provisions contained in them are objectionable.

35. *Bastu lands.*—With regard to bastu lands, I have the honour to state that there is no such practice in this district of exempting bastu lands from sale when the occupancy right in the culturable lands of the holding is put up for sale in execution of any decree; but I have come to know that in many cases the purchasers of ryoti holdings or of under-tenures, which are composed of bastu and arable lands, have sub-let the bastu portion of the holding or under-tenure to the previous owners of them at an enhanced rate of rent.

36. The holders of bastu lands, who do not hold arable lands with the same holding, are now entirely at the mercy of their landlords, for the tenants of bastu lands cannot acquire a right of occupancy in such land. The rate of rent of bastu lands in almost all the districts which I have seen is very high, and the ryots in this district are obliged to incur a good deal of expense and labour in order to make a piece of land habitable, as they are obliged to dig tanks, and to raise the land in order to make it higher than the level of water during the spring tide Then, again, they plant cocoanut trees and betel-nut trees in their homestead; but if the landlord likes he can eject them from their homestead land at any moment. It is a general belief amongst the illiterate men of almost all parts of Bengal that when a landlord lets land to a person for the purpose of dwelling, he cannot be ejected from the land, and that no one can be ejected from his ancestral dwelling-house. If any landlord ejects a ryot from his ancestral dwelling-house, he is hated by the ryots as a cruel man. To make a man "ভিটা ছাড়া," devoid of his homestead is considered as a great sin. The oppressive landlords very often threaten their ryots that, if they do not agree to pay the exorbitant rent demanded by them, they would drive them away from their homestead, and in this manner they bring them to submit to their terms. Under these circumstances I beg most humbly to suggest that it would be a very beneficial provision if right of occupancy would be extended to bastu lands.

J. E. S.—Reg. No. 4998C—327—7-8-84.

Dated Comillah, the 30th July 1884.

From—Baboo Aughore Nath Ghosh, Second Subordinate Judge of Tipperah,
To—The Secretary to the Government of Bengal, Revenue Department.

In obedience to your Land Revenue Circular No. 3T—R, dated the 28th May 1884, I have the honour to submit the following report on the revised Bengal Tenancy Bill.

2. My main objections to the substantive portions of the Bill are as follow:—

(*a*) The ryot's right to sell his occupancy right should not be made subject to a right of pre-emption on the part of his landlord.

(*b*) No landlord should be allowed to purchase the occupancy right of his ryot at any auction sale, whether the same is held at the landlord's instance or otherwise.

(*c*) The operation of section 37 of the Bill should be restricted only to existing occupancy holdings.

(*d*) There should be no enhancement by suit of the rent of an occupancy ryot holding a small quantity of land, on the ground that there has been a rise in the average prices of staple food-crops in the locality or at the usual markets.

(*e*) A ryot bound by a lease or other agreement for a fixed period should be allowed to relinquish his holding before the expiry of the term of his lease.

(*f*) Existing tenures, which are now not summarily saleable, should not be made summarily saleable. Future tenures of the first degree only, which may be made summarily saleable by the terms of their leases, may be made summarily saleable by law. But no sub-tenure should be made summarily saleable for arrears of rent.

3. I propose discussing each of these objections in the sequel under the appropriate chapter of the Bill.

CHAPTER I.

If it be considered expedient not to make sub-tenures summarily saleable for arrears of rent, then the definition of "patni tenure" should be so modified as to exclude durpatni, sepatni, &c., tenures from the definition of patni tenure.

CHAPTER II.

(*a*). The definition of ryot in section 5(3) does not cover ryot's holding under unregistered lakhirajdars. I think the following words may be added to section 5(1): "and includes unregistered lakhirajdars."

(*b*). I am not aware of any existing practice as to the status of a tenant holding more than 100 bighas; but I am of opinion that it would be a fair presumption to hold that, where the area of a holding exceeds 100 bighas, and the whole, or *the greater portion of it*, is sub-let, the tenant is a tenure-holder until the contrary is proved.

CHAPTER III.

Section 7—Does not say what is fair and equitable limit or rate. I think a clause may fairly be added to the section after clause (2) to this effect:—"The rate at which rent is paid by the tenure-holder should be presumed to be fair and equitable until the contrary is proved."

To sub-division (*a*) of clause (3), the following may fairly be added:—"What amount of bonus the tenure-holder or his predecessors in interest had to pay." I think it is expedient to enact that, when rent of a tenure-holder is enhanced by private contract, the contract must be registered.

Considering the fact that the enhancement contemplated by this chapter is in addition to the increase to be given to the landlord under section 66 for excess lands, I should submit that, instead of 10 per cent. as the minimum of the tenure-holder's profit, 15 per cent. may be allowed; and seeing that 4 annas in the rupee is made the maximum of the ryot's enhancement, I would beg to propose that the maximum in the case of tenure-holders be fixed at 50 per cent. instead of cent. per cent. Further, as the enhancement of the rent of the tenure-holder is likely to induce him to enhance the rent of his ryots, I think it would be expedient to extend the period of immunity from enhancement of rent in the case of tenure-holders to 15 years instead of 10 years.

As ijardars or farmers of rent are covered by the definition of tenure-holders in section 5, it is necessary to make some provision in this chapter with regard to their powers. As the ijardar has seldom any interest in the well-being of the ryots, it is desirable that he should be precluded from enhancing either by contract or by suit the rent of the tenants in the ijara, unless he himself happens to be a co-owner of the mehal.

CHAPTER IV.

I would humbly suggest that in clause (*a*) of section 23, instead of the words "as a tenure-holder," the words "as the holder of a permanent tenure" may be substituted.

CHAPTER V.

I am humbly of opinion that the capacity of the settled ryot to hold on an occupancy title may extend over an entire estate, however large that estate may be, provided that the estate is held *khas* by the proprietor. But where there are tenures within the estate or

village, a settled ryot of the proprietor should not be allowed to enjoy the privileges of a settled ryot as against the tenure-holder, simply because he is a settled ryot under the proprietor. Nor should the settled ryot of one tenure-holder be allowed to enjoy the privilege as against another tenure-holder, on the ground that both the tenures are situate within the same estate. Besides, where there is a division of lands by metes and bounds amongst the co-owners of an estate, the settled ryot of one co-sharer should not be allowed the privilege as against the other co-sharer or co-sharers.

A right of occupancy is a right to hold against the will of the landlord or his representative. It may therefore fairly be contended that a right acquired by the ryot against one landlord should not be allowed to be exercised by him against another landlord. Besides, the grant of such a right is likely to cause inconvenience to the ryot, inasmuch as it is likely that, when there is a demand for land, and the settled ryot under one landlord wishes to take land belonging to another landlord (a tenure-holder or a co-proprietor), but appertaining to the same estate, the latter will not readily lease out his land to him

Section 29(1)—May be struck off, and a clause may be added to the section to the following effect:—During the time a ryot remains in possession of the land in the double capacity of ryot and ijaradar, the operation of the acquisition of the right of occupancy will remain in abeyance. But as soon as a ryot becomes owner of the whole or a share of the landlord's right, his right of occupancy (if he has any) should cease to exist, and he should also be prevented from acquiring any right of occupancy.

The right of occupancy being a right to hold against the will of the landlord, to allow a ryot to acquire or enjoy such a right after his acquisition of the whole or a part of the landlord's right would be to give rise to the anomaly of the ryot holding against his own will. Besides, it may be observed that, when the ryot himself becomes the owner in whole or in part of the right of the landlord, he does not require the same protection as an ordinary ryot does.

I have objections to the ryot's right of occupancy being made subject to a right of pre-emption on the part of his landlord. I am humbly of opinion that, in order that the provision for the transfer of the ryot's right of occupancy may be of real benefit to the cultivator or the country at large, no right of pre-emption should be granted to the landlord; on the contrary, it should be expressly enacted that no landlord shall be allowed to purchase the occupancy right of his ryot in any execution sale. If the right of pre-emption be granted on voluntary sales by the ryot, the observance of the preliminary conditions, the cost and trouble attending the same, will hamper his freedom of action so much, that he is likely to sell it to his landlord for far less than what the real market price would be. It will always be in the power of the landlord to cause delay in the sale by the presentation of an application to the civil court for fixing the price. It is pressing necessity that is likely to make a ryot think of parting with his ryoti. It is therefore very likely that, as a rule, the ryot will be obliged to sell his ryoti to his landlord for an inadequate price.

There are localities where ryotis are already by custom saleable, such as Dinagepore and parts of Midnapore. To give the right of pre-emption to the landlord, there would be an unnecessary interference with the existing custom.

Section 56.—Of the old Bill, if retained, would have oftentimes dissuaded the landlord from exercising his right of purchasing an occupancy holding. But as that section has been omitted in the revised Bill, the ryot may fairly contend that the provisions of the Bill enabling the landlord to purchase a ryoti should also be withdrawn.

The right of occupancy is an existing right, and one of the objects of the Legislature should be to protect that right. But that object, I am afraid, will be to a great extent frustrated if landlords be allowed to purchase the right, and thus annihilate the same. In saying that the object of the Legislature should be to protect the right of occupancy, I mean simply to say that the right, as enjoyed by the real ryot, the actual cultivator, should be protected To allow neighbouring landlords, money-lenders and others who are not, properly speaking, ryots, to purchase occupancy holdings, would no doubt, in some cases, be detrimental to the interests of the landlord. I think the best practicable means of protecting the right of the ryot without encouraging persons other than ryots to purchase occupancy holdings would be to enact that, if the occupancy ryot lets out to any person who is not a co-sharer in his holding more than half of the lands comprised in the holding, he shall forfeit his right of occupancy; provided that, where a ryot is disabled from cultivation by age, sex, disease, accident or temporary absence from his home on military or domestic service, or a pilgrimage, he may, without subjecting himself to the penalty of forfeiture, sub-let more than half of his lands for a term not exceeding the duration of his disability; provided also that a company, corporation or factory shall not retain any right of occupancy purchased by it by cultivating half of the lands appertaining to the holding. As cases may arise in which some of the co-shares in an occupancy holding may, by sub-letting more than half the quantity of land that may happen to be in their possession, subject the entire holding to forfeiture, the following precautionary measure may be adopted for the protection of the other co-sharers:—Whenever a co-sharer in an occupancy holding sub-lets to one who is not a co-sharer more than half the quantity of land occupied by him separately, the other co-sharers may be allowed the privilege of enforcing against him the penalty of forfeiture in their own favour.

Such a provision as the above will not only dissuade persons, other than the real ryot, from purchasing occupancy holdings, but will also have the effect of making the ryot, when

he betakes himself to some other profession, part with his ryoti for the benefit of the professional ryot.

The adoption of the above plan would do away with the necessity of making the operation of section 37 prospective. As the adoption of the plan proposed by me with regard to existing occupancy holdings, of which the greater portions have already been sub-let, would work hard on the holders thereof, I would beg to suggest that owners of such existing occupancy holdings may be allowed the privilege of being considered tenure-holders under the conditions specified in section 37.

To make the operation of section 37 prospective would be to encourage persons, other than the real ryot, to purchase occupancy holdings. Such a course would be detrimental to the interests both of the landlord and the real ryot, and would have the effect of adding to the number of middlemen in the country.

In this connection, it appears necessary to observe that, as transferability is made an incident of occupancy right, there ought to be made provision for the registration of transfer of, and succession to, such right in the landlord's *sherista*, similar to the provisions made for the registration of transfers and successions in respect of permanent tenures.

I am further of opinion that it is necessary to prevent the splitting up of occupancy holdings as much as possible. As most of the ryots are governed either by the Hindu or the Mahomedan Law of Inheritance, the splitting up of such holdings is unavoidable. The evils of sub-division of such holdings may, in a measure, be prevented by giving the right of pre-emption to the co-sharers of the holdings at private sales. Section 310 of the Civil Procedure Code has already given this right to co-sharers in regard to execution sales.

On the most difficult subject of enhancement, I can only safely state that it is objectionable to enhance, on the ground of rise in prices, the rent payable by occupancy ryots *holding small quantities of land* in one or more ryotis; that if enhancement should be allowed with regard to larger holdings on the ground of rise in prices, the period of immunity from enhancement should be extended to 30 years, and that the cost of cultivation, which is an important element, should always be taken into consideration. When the price of the staple food-crop rises high, the ryot holding a small quantity of land, instead of being benefitted by the rise, suffers from distress.

CHAPTER VIII.

The retention of the 20 years' presumption is not so necessary now as it was in 1859. Under the present state of things, the best course that may be adopted is to give the old tenure-holders and ryots the last opportunity of taking advantage of the presumption within a certain prescribed period within which they may be allowed to register their holdings. As the registration of tenures is already in contemplation, a little additional cost will enable Government to cause the registration of old ryotis also, in regard to which the benefit of the presumption may be claimed. The adoption of this course will, no doubt, give rise to a certain amount of litigation; but it is better to have the disputes settled once for all in a short time than to leave the source of dispute to flow continuously. Until such registration is made, the presumption in its present form should be retained.

The provisions with regard to rent receipts and forms of account are very necessary; but the forms of receipt and account require a little modification. The entry of the quantity of land should not be made compulsory. This entry will be a source of contention between the landlord and the tenant. It will be the interest of the landlord to show a smaller quantity, and that of the tenant a larger quantity, of land in the receipt, and the consequence will be that there will arise a chronic misunderstanding between the landlord and the tenant.

The receipt should show the amount of *bakayabaki* or arrears due in respect of previous years: and in the account form there ought to be a separate heading for interest.

Sections 95.—Deprives the ryot, who holds under a lease for a term of years, of an opportunity of getting rid of a bad bargain entered into under section 56. As the non-occupancy ryot has not the privilege of demanding reduction of rent, if he chances to imprudently take a lease for a term of years at a high rent, he will be compellable to pay the same rent until the expiry of the term which may extend to any number of years.

I am humbly of opinion that a ryot holding under a lease for a specific term should not be deprived of the opportunity of relinquishing his land.

Section 96 (2)—Provides for a notice when the landlord enters on an abandoned holding. I think it would be safer to make the landlord publish the notice by beat of drum and through the court a short time before he enters on the holding. By prescribing such a formality, landlords are likely to be prevented from unduly exercising their right of re-entry.

This section makes no provisions for the protection of the interest of minor occupancy ryots. It not unfrequently happens that an occupancy ryot dies leaving a minor child, or a minor child and a widow; and these are compelled by necessity to go to and live in some relation's house at a distant village. I think it should be expressly enacted that possession of the lands of a minor occupancy ryot by a third party will not prejudicially affect the rights of the minor to his holding. Seeing that the zemindar, when he happens to be a minor, is protected by his superior landlord, the Government, I think the minor ryot can claim the indulgence of having his ryoti right protected by the zemindar or his representative during his minority.

The provisions with regard to the appointment of managers for the management of joint estates and tenures are very necessary in the interests both of the co-owners and their ryots.

With the advance of time zemindaris are becoming more and more split up into shares; but on the other hand the joint family system is losing its hold on the community, and the influence of the *kartta* is gradually vanishing. Under such a state of things it is very necessary that the Legislature, which has created permanent and divisible property in land, should take steps for the prevention of the mischief which the result of that divisibility has brought about, and is surely expected to bring about in future. As regards estates, the provisions for the appointment of managers by the District Judge is so old as 1812. As those provisions have not injured the zemindars during such a length of time, it may be reasonably expected that the retention thereof in the present Bill will not seriously prejudice them. Besides, the sections of the Bill do not, like Regulation V of 1812, enable the District Judge to appoint a manager without giving the co-owners an opportunity of appointing a manager for themselves. I am, however, humbly of opinion that express provision should be made, giving the right of appeal to the co-owners against the order of the District Judge for the appointment of a manager, as also against his order declining to appoint a manager, and against the selection of a manager made by the District Judge. Under Regulation V of 1812, the co-owners had the right of appeal against the selection made by the District Judge.

CHAPTER XII.

For the protection of occupancy rights, it is necessary that the provisions of this chapter should be carried out with as little delay as practicable.

CHAPTER XIII.

In my humble opinion it is better to have distraint exercised through the courts in the way prescribed by the revised Bill than that the process should be left to the unsupervised action of the landlord's servants. As regards the argument that the delay caused by obtaining the aid of the court before the first step to distrain can be taken must deprive the process of its utility, I beg to observe that in cases in which the landlord has reason to believe that the ryot is likely to cut and take away or dispose of the crop, the landlord may take the precaution of making his application for distraint a little earlier; and if he would in urgent cases move the court for an *interim* order, and fill up the form of processes, there is very little chance of his application falling through. Even that little chance of failure may be removed by the insertion of an additional section, to the effect that the landlord may, if he chooses, make the distraint himself as he now does under section, 72 of Act VIII (B.C.) of 1869; but that he shall not be allowed to cause the crops to be reaped or gathered without the intervention of the court, to which application must be made within five days [section 78, Act VIII (B.C.) of 1869] from the time of making the distress for reaping, gathering and selling; and that the distraint should be made in the presence of the village punchayets and the village chowkidar.

I am further of opinion that it is better to leave the court free to sell all sorts of standing crops, whenever it may deem it expedient to do so, than to prohibit it from selling crops and products which from their nature admit of being stored before they are reaped or gathered. The greater portion of the mischief and expense relating to distraints arises from reaping and gathering. The more it is avoided, the better for both the landlord and the tenant, and also for the court.

I think the provisions regarding distraint should be made applicable to all classes of *ryots* and *sub-ryots*. It is difficult to say that the sale of occupancy rights will fetch enough to satisfy the landlord's demands in all districts, or in all chowkies in the same district. In connection with the subject of distraint, there is another question which requires consideration. It is this: Whether a landlord should be allowed to exercise the power of distraint in a year of scarcity or famine. In regard to this question, I would beg to observe as follows:— As regards a year of scarcity or famine, the court should be authorized to decline to distrain all or any portion of the crops of a ryot; and directed to take into consideration the degree of scarcity, the condition of the ryot's family, and the quantity of the produce received or likely to be received by him. The Local Government may also be invested with power to postpone the operation of this chapter in any particular locality, for any particular period, on account of scarcity or famine. It may also be empowered to postpone the operation of this chapter in any particular district or chowki with regard to occupancy ryots, on the ground that the value of the holding itself is, as a rule, sufficient security for the landlord's rent.

CHAPTER XIV.

I cannot approve of the zemindar's proposal to the effect that a landlord should be permitted to institute a collective suit against any number of tenants belonging to one village by means of a single plaint. The adoption of such a plan would create confusion at the trial, and would render it difficult for the Judge to pay due attention to every point in every case. At present, when a landlord institutes several suits against different ryots of the same village at or about the same time, it not unfrequently so happens that the Judge finds it convenient to try some of these cases together, and dispose of them by one and the same decision. Cases so tried together are called analogous cases. This practice may be encouraged by giving it a legal sanction, and also by the remission of some court-fee which may be either plaint fee or process fee.

Section 161.—The written authority mentioned in section 161 of the revised Bill should be a registered document, and should be filed with the plaint; and the chief ministerial officer of the court may be authorized to endorse on it the word "seen," and to enter a note on the back of the plaint of his having seen the authority. The document may be returned at once.

Section 163.—It would be better to give the defendant the option of putting in a written statement. It would not always be easy for a Munsif in a heavy chowki to take down with due care the abstract of the defence on the first day fixed for the hearing of the case, when the case has to be postponed. As a rule, the defence in a rent-suit is more complicated than the defence in money suits triable summarily by the Small Cause Court.

I beg to object to the application of section 189 of the Code of Civil Procedure to appealable rent-suits. It would be very difficult for a court of appeal, having to deal with facts, to come to a correct conclusion as to the merits of the case without having the entire evidence before it.

Section 164.—This section is also objectionable. It in a manner assumes that the plaintiff's allegation is true, and that of the defendant is false, and it compels the ryot to pay money suddenly, which it may be sometimes impracticable for him to do. It further casts the onus of proof on the party whose claim the defendant admits.

I think it would be better to revive section 77 of Act X of 1859 with certain modifications than to adopt section 164 of the revised Bill.

Section 165.—This section too is objectionable. It will oftentimes have the effect of compelling the ryot to raise a false plea of payment or to submit to injustice. Owing to inability to pay in ready money the entire amount really due from him, he is likely to have recourse to the devise of denying liability to the full extent, or if he admits the full amount due, and is unable to deposit that amount, he will be deprived of the opportunity of proving the part payment that he might really have made.

The chapter on distraint deprives the ryot of the opportunity which he now has of contesting a distrainer's demand during the pendency of the distraint. The working of that chapter, coupled with that of sections 164 and 165, will press very hard on the ryot, especially in years of scarcity or famine caused by drought or inundation.

Section 168.—This section may be retained, with the addition of the following to paragraph 4 :—"Or a question of the amount of rental payable by the tenant." Sometimes the question of the amount of rental payable by a tenant is as important as a question of a right to enhance or vary the rent. It may not be necessary to retain the proposed addition after the expiry of four or five years after the passing of the Bill, and the consequent operation of the section regarding receipts (sections 70 and 71), but until that time the proposed addition is urgently required.

Section 174.—This section is likely to be beneficial to both the landlords and tenants. It may be retained with the following addition :—"The application shall be registered and dealt with as a suit between the parties."

It has been held that, under the Civil Procedure Code, an appeal lies from a judgment passed *ex parti* against a defendant Asrafannesa and another *versus* Lehareaux, I. L. R. VIII, Cal., 27 2). I am humbly of opinion that provision ought to be made in the Bill prohibiting any such appeal. I think it would not be safe to adopt the proposal that *ex parti* suits should not be re-tried except upon the defendant depositing the amount decreed, nor is it expedient to prescribe that a defendant should not be allowed to appeal from a decree passed against him except on depositing the amount of the decree. However, I am inclined to think that it may be safely enacted that, if an application is presented for the revival of an *ex parti* decree within seven days next preceding the date fixed for the sale of the attached property, and the court considers that the application has been designedly and unnecessarily delayed, the application shall not be entertained unless the whole or a part of the amount of the decree is deposited in court.

Doubts may arise as to whether section 222 precludes co-sharers from suing separately for arrears of rent. I think this doubt should be removed by expressly enacting that, when rent is payable separately, any co-sharer may bring a suit in regard to his own share, or when rent is paid jointly, and the co-sharers cannot agree in bringing one and the same suit against a tenant, any one or more of them may bring a suit for the entire rent due by making the remaining co-sharer or co sharers parties (defendants) to the suit.

CHAPTER XV.

I have no objection to a mortgage or other lien being included in the definition of "registered and notified encumbrance;" but I am not prepared to say that the inclusion of sub-tenancies in the definition will be beneficial to the country at large. A mortgage is but a temporary encumbrance, and if it becomes the subject of litigation, the litigation is likely to take place within a few years of its creation, at any rate during the lifetime of the zemindar or other superior landholder and the parties concerned in serving the notice on him. But a sub-tenancy being a permanent encumbrance, it may be the subject of litigation long after its creation, perhaps after the death of the superior landholder and of the parties concerned in serving the notice. When such would be the case, it would be difficult for the parties to adduce the necessary evidence, and for the court to arrive at the truth. I think it is better to confine the sub-tenant's remedy to section 188 than to introduce a prolific source of litigation by adopting the provisions of section 179. Besides, the adoption of the

provisions of section 179 would be offering a sort of encouragement to sub-infeudation. But, in my humble opinion, the increase of sub-infeudation isnot a desirable state of things. Increase of sub-infeudation means increase of middlemen with small incomes. But the smaller the income of a landlord, the more exacting he is likely to be.

Section 190.—Is objectionable. The reason which led the Legislature to frame section 294 of the Code of Civil Procedure is applicable with equal, if not greater, force to the case of a purchase of an occupancy holding by a landlord at a sale held in execution of decree for arrears of rent. He is not only the decreeholder, but the landlord also. It would be difficult for his own ryots to bid against him. His prestige, and the fear of incurring his displeasure, would be likely to prevent them from bidding at a sale in which he or his agent would bid. Besides, to allow the landlord to purchase would be to open a wide door to the annihilation of occupancy rights.

CHAPTER XVI.

Section 194.—I have already noticed the definition of a patni tenure.

Section 202.—"Any under-tenure existing from the time of the Permanent Settlement," and any lease of land whereon dwelling-houses, &c., have been erected, or permanent gardens, &c., have been made, are "protected interests" under section 176; but the same class of tenures and leases are not protected by section 202. This seems to be an inconsistency and requires consideration.

Section 209—In my humble opinion of the tenures now existing, none but patni tenures of the first degree, which are already subject to be summarily sold, should be made summarily saleable. To subject existing tenures other than patnis of the first degree would depreciate the value of the tenures to the tenure-holders who have taken or purchased the tenures, in the belief that they are not summarily saleable. I am also of opinion that the summary sale procedure should not be made applicable to the recovery of arrears of Road cess and Public Works cess from rent-free tenures.

CHAPTER XVII.

The provisions of section 210, excepting clause (*d*), are very necessary for the protection of the ryot. I would humbly suggest that a contract made by a ryot to pay interest on arrears at a rate exceeding a particular specified rate should be rendered void by section 210.

Section 216.—In the district of Tipperah (with the exception of pergunnah Nurnagore) the circumstance of the *bari* of a ryot being unconnected with his culturable ryoti lands is very rare. As a rule, every ryot has his homestead comprised within his ryoti. I have been informed that "a considerable number of *bastu* holdings exist in pergunnah Nurnagore, which are quite distinct from the holdings of agricultural lands."

No practice prevails in this district of exempting the *bastu* land from sale when the occupancy right in the arable portion of the holding is put up for sale in execution of a decree. Isolated instances of such a practice have not occurred within my own experience, nor within the experience of the several Munsifs in the district whom I have consulted. I have never known of the existence of a custom whereby a ryot, who is ejected from, or who otherwise parts with, his holding, is entitled to retain possession of his homestead lands.

I have learnt that in the Tipperah district there is so much elevated land or site for homesteads in every village, that now-a-days the landlord or the ryot has very little occasion to lay out capital for preparing new homesteads.

To meet all sorts of cases, I would propose that ryots' homesteads may be divided into two classes—viz. homesteads comprised within the ryoti, and homesteads not comprised within the ryoti.

With regard to the former, I would propose that they may be sub-divided into two classes—viz. homesteads comprised within ryotis in regard to which the ryots have acquired a right of occupancy; and homesteads comprised within ryotis in regard to which they have not acquired any right of occupancy.

As regards the first sub-class, no special provision is necessary, inasmuch as the Bill provides for the execution sale of occupancy ryotis, and prohibits the ejectment of occupancy ryots for arrears of rent. If an occupancy ryot makes default in the payment of his rent, and thereby causes his ryoti to be sold, it is his own laches which makes him lose his homestead. However, it should be expressly enacted that, when such a ryoti is sold in execution, and the ryot does not choose to remove his huts or building within a month from the date of attachment, the same shall be sold as a part of the ryoti. The adoption of this proposal will give the ryot an opportunity either of having a ready means of housing himself elsewhere, or of getting compensation for his huts or building in the shape of price thereof.

As regards the second sub-class, I am of opinion that the landlord may be allowed to eject the ryot in accordance with the provisions of Chapter VI, provided that he pays compensation to the ryot in regard to the house erected by him; that in no case the compensation shall be less than half the amount necessary for erecting a similar house in the neighbourhood; and that, in calculating compensation, the expenses (if any) incurred by the ryot for raising the homestead land above the flood level may be taken into account.

Under-ryots may be dealt with like ryots without right of occupancy, that is to say, they may be ejected from their homesteads which are comprised within their under-ryotis in accordance with the provisions of section 63, provided that the landlord pays him compensation in the manner alluded to

As regards a homestead which is not comprised within a ryoti or under-ryoti, it may be enacted that the ryot or under-ryot should not be ejected on any account, although his occupation has not extended to more than one year, but that his right to the homestead may be sold for arrears of rent, provided that he may not be allowed to sub-let the same without the written permission of his landlord, and provided that he may be allowed the option of removing his huts or building within a month after the date of attachment.

C. E G--Reg. No. 4812C—315- 2-8-84.

BENGAL SECRETARIAT LIBRARY

Dated Rungpore, the 30th July 1884.

From—Baboo Nobin Chundra Gangooly, Subordinate Judge, Rungpore,
To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your Land Revenue circular dated the 28th May last, I beg to state that on perusing the reports and dissents referred to therein, I find that much has been said by many eminent men on both sides of the question raised in those reports and dissents. I must adopt the opinion of one of them. It is therefore useless to repeat them here; suffice it to say that, as regards the substantive portion of the law laid down in the Bill, I agree in opinion with the late Hon'ble Krishna Dass Pal in almost all points, except as to the transferability of occupancy rights. I am of opinion that the new right created by the Bill will save both the landlord and the tenant from a great amount of litigation. The law on this point as it stands at present is that such right is saleable if there exists a custom to that effect in the locality. The question whether or no such a custom exists is a fruitful source of litigation. It is better for both parties to have a definite law on this point.

As regards the procedure portion of the Bill, I cannot suggest a better course except as suggested by the late Hon'ble Krishna Dass Pal that summons on defendants may be served by registered postal covers.

With reference to the second paragraph of your letter, I beg to state that I know of no such practice prevailing in any district where I served, viz. Tipporah, Sylhet, Mymensingh, Hooghly, 24-Pergunnahs, Burdwan, Beerbhoom, and Dacca.

With respect to the last paragraph of your letter, I beg to observe that I never saw non-occupancy ryots having any right in the lands held by them except that of holding them at the landlord's will. However, in Beerbhoom I found such tenants have right of selling their jotes by the custom of the place. Although in a former case the High Court refused to recognize its existence, on the ground that it was improbable, still in a more recent case, which was better conducted, I found its existence in that district, and it was upheld in appeal up to that Court. It ought herein to be remarked that the custom, if it does at all exist, must apply to all jotes. A custom to have the force of the law must be ancient. But occupancy rights were the creation of Act X of 1859, therefore the custom of sale of such rights only cannot be ancient. Consequently, where by custom rights of occupancy are saleable, there must exist the custom of sale of non-occupancy rights also, and that is the case in Beerbhoom.

J. E. S.—Reg. No. 4806C—315—1-8-84.

Dated Magura, the 16th July 1884.

From—Syed Moazzim Hossein, Judge, Small Cause Court, Magura,

To—The Officiating Secretary to the Government of Bengal, Revenue Department.

I have the honour to acknowledge with thanks the receipt of the revenue circular No. 5/T.R., dated 28th May 1884, calling upon me to submit a report on the amended Bengal Tenancy Bill with special reference to some of the most important questions on the subject pointed out therein.

As I have already stated in my report submitted last year, I am still of opinion that there is no necessity for fresh legislation on the matter. Any alteration in the existing law tending to create new rights in favour of tenants will upset the established relations between landlords and tenant, and tend to create very disagreeable feeling between two of the most important sections of the community to the great detriment of peace and prosperity of the country. The present Bill, notwithstanding the important alterations made by the Select Committee, is still open to most of the objections pointed out in my previous report. I would in course of my present report humbly take the liberty briefly to refer once more to some of the most important of those objections.

CHAPTER II.

Section 5.—In my opinion it would be a direct invasion of the rights of the landlord to legislate that an occupancy tenant who sublets more than half his holding, irrespective of the quantity of lands held by him, and a tenant who holds more than 100 bighas and sublets a part or the whole of his holding, should be in the one case converted into and in the other presumed to be a tenureholder, whose rights and privileges under the existing law are acquired only by the payment of a valuable consideration under contracts entered into with the proprietor. If, however, some consideration is to be shewn to old tenants holding large quantities of lands, I should think that occupancy tenants holding 100 bighas or more may be presumed to be tenureholders if they sublet not less than half their holdings.

The provisions of sections 5 and 37 may to a certain extent deter money-lenders from making purchases of the ryots' holdings, but I do not think it would be an effective remedy against the evils which the provisions aim at, and it would be indeed very difficult to ascertain and register the numerous sub-tenures, covering in the aggregate half of the holding.

CHAPTER III.

By the provisions of this and the fifth chapter two difficult procedures for the enhancement of rent have been adopted—the one applying to the tenureholder and the other to the occupancy ryot. At the outset the court would be beset with difficulties in deciding whether a tenant is a tenureholder or ryot, inasmuch as it is not possible to ascertain by evidence, particularly in cases of old holdings, whether the tenancy were acquired for collecting rent or for cultivating land. It would be more difficult to determine the nature of a tenancy by reference to local custom, the existence of which it is not easy to establish, and it has been already said that the presumption of a tenant holding more than 100 bighas being a tenureholder is not a fair or just one. An uniformity in the procedure as to enhancement of rent in cases of tenureholders and ryots therefore seems to be desirable.

A double limit as to time and amount, provided by sections 8 and 10, will go hard against the zemindars. The 10 years' limit, until which the rent of a tenureholder should not be enhanced, may be retained, but I should think no restriction should be put to the amount to which the rent should be enhanced. Increase of rent to a reasonable amount should not be provided against.

CHAPTER IV.

The retention of 20 years' presumption rule (section 64, sub-section 2) is no longer necessary in these days. Since the passing of Act X of 1859 every ryot is expected to be prepared with 20 years' rent receipts, and shift the onus on the zemindar, who is thereby placed at a great disadvantageous position, having to prove his case by production of collection papers from the time of the Permanent Settlement, which they might be at a loss to preserve. If the court disbelieve them there is no other means left to rebut the presumption. The rule, however, goes very harshly against those proprietors who have shewn forbearance, particularly towards certain classes of landowners, such as widows, minors, and auction purchasers. The rate practically stops enhancement. If, however, a presumption is to be retained, the period of 20 years should be counted from before the passing of Act X of 1859, otherwise there would be no end of litigation and no end to the amount of fraud, perjury, and collusion between ryots and zemindars' agents, and this will prove highly injurious to the just rights and interests of landholders. It would be better to stop enhancement by enactment of law than to propose such changes, which will tend to no benefit of the landlord, and by which the ryot will unnecessarily lose his time of cultivation and suffer in purse in the bargain.

CHAPTER V.

The definition of the settled ryot is most unjust and unreasonable. If the question were yet open to general discussion I would enter a strong protest against such arbitrary presumption in favour of the ryots. Nothing would be more absurd than to legislate that the capacity of the settled ryot to hold on an occupancy title should extend beyond the plot or plots he has actually held for 12 years.

As for the transferability of lands, it is jurious both to the ryot and to the zemindar. On the one hand this right will tempt the ryot to run recklessly into debt on the occasion of marriage, &c., on the other hand the zemindar would be deprived of his just rights, and shall be compelled to purchase his own land to prevent the same from passing into the hands of hostile men and objectionable tenants though he may have no money in hand. In the district of Jessore the custom of transferability of occupancy holdings is known to prevail, but in most cases the purchases are made by the zemindar himself for paltry sums which do not even cover the decretal amount; so this rule of transferability benefits none. I should think special legislation making provisions for transferability of occupancy holdings is not necessary in the district where the custom is not in existence. If, however, the right of transferability is to be extended to the occupancy ryot at all, no transfers should be considered valid as against the zemindar (who, as a matter of fact, always befriends his tenants) unless made with his consent. I think sections 13 and 14 with the sub-sections ought to be applied equally to the case of those ryots who are, as is proposed by this Act, to be empowered to sublet as in the case of putni tenures.

(*g*) *Sub-letting.*—Nothing to say at present.

As regards enhancement of rent I should think the existing law on the subject should remain undisturbed.

With reference to busto or homestead lands, I have to say that I am aware of no custom whereby busto land is exempted from sale when the arable portion of the holding is put up to sale in execution of a decree; nor do I remember any isolated cases of such practice having occurred anywhere. But I am of opinion that some consideration ought to be shewn to ryots with respect to homestead lands, and they should not be left to the tender mercies of landlords.

There are certain busto or homestead lands the primary object of which is not cultivation; they are quite independent of culturable lands. When a person occupies such lands *bonâ fide* for a period of 20 years, every legal facility should be allowed to him to enable him to continue in such homestead as long as he pay the rent due to landlord, but with the restriction of not being able to transfer it.

Busto lands when included in any holding always form an integral part of it, and neither the landlord nor the ryot ever thinks of separating them from the main holding. It is generally the custom of these parts not to lease out homestead lands separately apart from arable lands to a cultivating ryot. Every lease, whether held under a written contract or not, almost always includes some arable lands in it, and any right that a cultivating ryot may acquire affects the different kinds of lands in the same way. When a holding includes homestead lands, and is held under a written contract, separate rates of rent are generally given to the different kinds of lands in the contract, busto land being rated at about double the jumma of arable lands, the whole making an indivisible entire holding, the ryot not being entitled to retain any portion of it in case of ejectment, sale, &c. In such cases the ryots generally undertake to forfeit the entire holding if they do not live upon the land declared to be busto in the engagement, although instances of enforcing this condition are not very common. I do not think it would benefit either the zemindar or the ryot to divide their holdings and attach different conditions and rights to such busto lands. It shall not only have the tendency to lessen the value of arable lands as such, but make the ryot indifferent to their improvement and proper cultivation. Nor do I think that busto land should be exempted from enhancement in all cases and all conditions. The objections of transferring the right without the consent of the landlord applies fully to this case to save the ryot as well from evil consequences.

In this district, except the statutory right of occupancy, a ryot cannot acquire any other right to his holding either by custom or otherwise.

Generally the homestead or busto lands of the ryot is only a part of his holding, and is a mere subordinate tenure, the arable portion being the principal one, and I am not aware of any case in which the ryot is allowed to retain possession of the busto land, notwithstanding that his arable portion is sold; as such I should think, the busto land of the ryot should continue subject to the same rules as to enhancement as the arable portion, and it would be sheer injustice to the zemindars to exempt the busto land, an integral and important portion of the entire holding, from enhancement. It is not unusual, particularly in river districts, such as Jessore, that homestead lands are raised above flood level solely with the ryots' money, and in that case they will not certainly be liable to enhancement under the law; but it may so happen that the improvement is made with the expenses of the zemindar, where the ryots are either poor or unwilling to undertake the work. If the busto land is altogether exempted from enhancement, the consequence will be that in cases where the ryots are in need of zemindars' help to raise their homestead land above the flood level, or otherwise improve the same by digging tanks or excavating canals, which may require an outlay of a considerable sum of money which the ryots may not be in a position to meet out of poverty or disagreement amongst themselves, the zemindar will not undertake the work, because he cannot recover the amount thus expended, and the poor ryots will continue to struggle against the inconvenience and evils which it is not in their power to remove.

In my opinion neither the time of commencement of deterioration in the land nor the manner of operation bringing about the same can be precisely defined, for the deterioration may in some cases be brought about imperceptibly and by causes unforseen. A fixed proportion of the produce of a certain number of years may, I should think, be fairly considered as an equivalent for commutation of a grain rent into a money rent.

The price lists as now prepared are no safe guides to arrive at a just finding as to the value of the produce at the harvest time.

Enhancement cannot be fairly allowed in direct proportion to the rising of the price of crops; some allowance should be made for the increased costs of production, and some distinction as to extent of reduction should be drawn between the remote districts not enjoying facilities for good communication for want of railways and those enjoying good communications.

In particular districts, such as Dacca and Mymensingh, where jute is extensively cultivated, jute should, I think, be considered as a staple crop, the price of which should also be taken into consideration as that of rice or dhan for the purpose of enhancement suits.

CHAPTER VI.

It would be inequitable and unjust to bring the non-occupancy ryot into the same footing with the occupancy ryot as regards enhancement. The former being a new tenant at will should be left to arrange his rent under contract entered into with the landlord. No limit as to enhancement is needed in respect of tenants who are liable to be ejected whenever they cannot come to terms with the landlord, whose discretion or will to bring in new tenants, whenever the same is expedient or profitable to him, should not be fettered by legislation, as it would tell hard against him.

CHAPTER VII.

No limitation should be put as to rents payable by underryots. The rate of supply and demand should be left to have its free course, and the parties should be left to use their own discretion

CHAPTER VIII.

I think no remarks are necessary on the provisions of the chapter referred to in paragraph 17 of the letter of the Government of India, for no alterations or amendments are needed.

CHAPTER IX.

The sinking of wells by ryots is almost unknown in Lower Bengal. I should therefore think that non-occupancy ryots should not be declared entitled to sink a well except with the permission of the landlord, for the well alters the nature of a tenure. In Behar, however, it is a necessity for agricultural purposes; so, in my opinion, the Behar ryots alone should have the privilege of delving wells without the permission of the landlord.

I should think it is a sufficient protection to the ryot who voluntarily abandon his residence, without giving notice to the landlord and arranging for payment of rents, and who does not cultivate his lands, as the first part of section 96 provides that the landlord should wait till the expiry of the agricultural year before he re-enters on the land. The second and third paragraphs of that section should be expunged from the Bill, for otherwise the landlord will not be in a position of enjoying the benefit of paragraph 1 of the section, inasmuch as the landlord will virtually have to wait to let his land or take to cultivation himself until after the expiration of six months more in case of non-occupancy ryots and two years more in case of occupancy ryots, as no new tenant will venture to take the risk of his arrangement with the landlord being upset at the instance of the old tenants, instigated in many cases by designing people; so the landlord will lose his rent for the land which in most cases would not be recoverable from the outgoing tenants whose new residence it will be difficult in many cases to find out. It has come to my notice that the ryots evaded payment of just rents and debts by abandonment of old residence and by shifting their abode from place to place Cases are rare in which landlords eject old tenants to put in new ones, and in these cases redress may be obtained from law courts

The landlord's right to measure lakhraj land in his estate should be limited to the external boundary only. The measurement should be made by the local and not by the English system of mensuration (which is not comprehensible to the public) and by the officially determined pole.

CHAPTERS XI AND XII.

I know of no land other than the land defined in section 138 (1) in which the cultivator cannot ordinarily acquire the right of occupancy. In enhancement suits difficulties may arise in certain cases to find to which class or classes the holding belongs, and local enquiry by officers above the grade of the present civil court ameen may be necessary; so I should think that certain distinct provisions should be made as to the class of persons by whom the enquiry should be held.

CHAPTER XIII.

I should think the existing law on the subject of distraint should stand, otherwise the landlord will be in many cases without remedy to recover arrears of rent from an improvident peasantry or wicked tenants who have often been found to leave the land as soon as the crop is cut, and shift their abode from pla e to place to evade payment of rent. The procedure laid down in the Bill as to distraint is a cumbrous one; as such, before all the ceremonies are gone through for the court to arrive at a finding to issue a process of distraint, or before the court has thought fit to issue an *interim* order under section 141 (3), the ryot may have an ample opportunity to abscond with the crop.

CHAPTERS XIV AND XV.

Section 159.—As it is not known what rules the High Court will make, any comment on this chapter must necessarily be incomplete.

Section 163 (*b*).—Under the existing law boundaries are not required. It will be of no practical good to give boundaries in plaints for simple rent, because no dispute regarding land will be decided in such cases. On the other hand, it will be a very troublesome affair to enquire and find out the boundaries of a tenant's holding which may consist of a hundred plots, before suing him for rent.

(*d*).—Attestation of service, not effected through post-office, should be taken from some two respectable residents of the village, as the Hon'ble Kristodas Pal suggests.

(*f*).—In cases when appeal is allowed, the evidence should be recorded *in extenso*, because the value of an appeal will be minimised if short notes of the evidence only be taken.

Section 164 —With reference to money deposited in court as due to a third person, provision should be made to enable the plaintiff to take out the amount so deposited at any time by giving sufficient security for the same. The absence of such a provision is likely to prove a source of considerable and unnecessary vexation and trouble to the landlord, inasmuch as his dues would be withheld from him for at least three months for no fault of his own, but on account of a disaffected ryot, who has simply to name a third party when making the deposit, and who is made subject to no penalty whatever for his action by which his innocent landlord may be put to so much unnecessary trouble, even if his allegation as to the third party's title proves quite unfounded subsequently.

Section 168.—The provision of section 168 of the Bill should, I think, be left unaltered.

Section 171.—As to the right of an ejected ryot, I think if the ryot be allowed to retain possession of the land only so long as the standing crop on it may remain ungathered, sufficient consideration will be shewn to him. No such indulgence, however, should be shewn in cases in which simply the land has been cultivated or prepared for sowing. If such cases be considered, a wide door would be thrown open for litigation to prove whether such cultivation or preparation of land took place prior or subsequent to the commencement of the proceeding for ejectment by the landlord.

Sections 175-177.—I have to remark that any lease of land whereon dwelling houses have been erected, or permanent garden, &c., have been made (section 176, sub-section *c*), should be deemed to be protected interest only when granted with the written permission of the landlord previously obtained.

The protection of registered notified incumbrances (section 175, sub-section *a*) within the meaning of chapter XV will ultimately open a door to fraud. The ryot will often collusively create undertenures at a low rent and allow a tenure to be sold for arrears of rent, and the purchasers finding that the yield from the tenure scarcely covers the landlord's dues, because of the creation of the undertenure which may consist of the best lands of the tenure, will be obliged to relinquish the tenure, when the landlord will have to look out for a new tenant, but will find none. For instance a tenant creates an undertenure consisting of five bighas of land out of 10 bighas, all of the same quality, comprising the tenure held by him at a yearly rental of Rs. 20, and agrees to take from the undertenant (a friend or a relation of his) only Rs. 5 a year as rent; suppose the tenure is sold for arrears of rent and the sale proceeds cover the decretal amount and cost of sale. Now the purchaser will not be in a position to meet the landlord's demand from the yield of the five bighas yet held by him direct and the rent of the undertenure payable to himself; he will therefore throw off the tenure, and the landlord will scarcely be able to find out a new tenant.

CHAPTER XVI.

No remarks to offer.

CHAPTER XVII.

With regard to the provision of section 210, I think I should simply reproduce my remarks in the original Bill, which are as follows:—"No restraint should be put on the freedom of contract. When contracts entered into by people in other matters are respected by courts of law, and sanctioned by the established usages of the country, there is no reason whatever why a contract between proprietor of land and tenant should be respected only when it binds the zemindar (section 74 and sub-section 2)."

For the provisions as to *chur* and *dcara* lands I have to offer no remarks.

CHAPTER XIX.

Section 227.—No remarks to offer.

As to point 2 in paragraph 2 of the Government of India's letter, I am not aware of the existence of any dependent talooks whereof revenue was settled direct with Government but is paid through the zemindar. As regards point 3 I think the summary sale procedure, if made applicable to the recovery of arrears of road cess and public works cess from rent-free tenureholders, would in many cases bring valuable tenures into sale for recovery of paltry sums; so greater evil would result than temporary inconvenience now felt from the existing state of things.

I am not in a position to offer any remarks with regard to points 5 and 6.

J. E. S.—Reg. No. 4239C—300—23-7-84

No. 142, dated Howrah, the 30th July 1884.

From—BABOO SREE NATH ROY, Judge of the Court of Small Causes, Hooghly, Serampore, and Howrah,

To—The Secretary to the Government of Bengal, Revenue Department.

I HAVE the honour to acknowledge the receipt of Government circular order No. 5T—R, dated 28th May 1884, calling for opinion on certain points connected with the revised Bengal Tenancy Bill, and in reply, so far as my humble experience enabled me to do so, to submit as follow:—

1. I am not aware of any practice of exempting bastu lands from sale in execution of a decree when the arable portion of the holding is liable to sale. A ryot ordinarily has no other title to the land than the right of occupancy under Act X of 1859, acquired by a continuous possession of 12 years. It has been held by the High Court in several cases that a ryot other than a cultivating occupant ryot has no right to retain possession of his holding (referring specially to homestead lands) against the landlord when he sues for ejectment after due notice to quit, unless the ryot succeeds in proving the permanent character of his holding. Thus it is clear that there is no such custom which recognised any right in a ryot to his holding other than a right of occupancy acquired under the law or by a contract between himself and the landlord.

2. The provision in section 5 (5) in favour of a tenant without a *primâ facie* proof that he holds the position of a middleman, either by custom or by the nature of the right he originally acquired, would be a fruitful source of litigation. The difficulty and expense to which the zemindar would be subjected to in getting rid of the presumption, would invariably be an inducement to the tenant, when dispute arises between him and the former, to urge that his holding comprised 100 beegahs, and that he has sub-let a portion of his holding. A beegah of his land may be sub-let only with a sinister motive, and he turns himself a tenure-holder. This will be considered by the zemindar as an encroachment upon his rights and interest. The creation of an intermediate holding superior to a tenant right is virtually a transfer of certain interests in land, with the reservation of the right to receive a special amount of rent, and as such the zemindar expects a reasonable price for it, and in practice, when such a disposal takes place, he gets, considering the value of the property in the present times, not an insignificant amount by way of bonus or consideration for the interest disposed of. Now, the creation under the law of an intermediate holding of the nature above alluded to, because a certain tenant holds a peculiar position, would be considered by the zemindar as an act of injustice to his just rights.

3. The provisions of section 37 seem still more objectionable. The advantages of a tenure-holder, with the exception of the provisions for enhancement of rent, are great, and a ryot with a view of defeating the interest of the zemindar may nominally sub-let half his holding to the members of his own family or near relations and friends, with a view to become a middleman himself. These provisions will create hostile feelings, and one class will be perpetually setting against the other, and the harmony of action beneficial to the landed interest will be gone for ever, and litigation and strife will be the order of the day. But apart from the question of litigation, the zemindar in course of time will find himself in the position of a simple collector of rent, losing all rights to the land. This would deteriorate the value of the property, and not only the zemindar will suffer loss, but the Government also will experience difficulty in realizing revenue. The Sunset law would not be a sufficient guarantee for the peaceful and speedy realization of the revenue in the absence of inducement to acquire landed interest where the right would be precarious and unprofitable. The Government may purchase the property for itself, but this course, if adopted, would eventually effect extinction of the zemindar class.

4. The sub-letting and free sale of the holding of an occupant ryot are apparently advantageous to the ryot, but in practice the result would be the reverse. I am, however, humbly of opinion that sub-letting is preferable to a sale. By sub letting the tenant may meet the periodical difficulties without losing an inch of right to the land, while by the sale the property passes to the purchaser, and the tenant becomes a ruined man, unless he can cope with hard competition and regain the property as a sub-tenant. If the purchaser happens to belong to the cultivating class, and chooses to sub-let less than half his holding, and the out-going tenant succeeds in getting a lease, he loses his former position and becomes a sub-tenant without the least right to the land. If the purchaser lets half his lands, the tenant may acquire the occupancy right, but free competition will not always secure the land to him (the out-going tenant). Gradually the true cultivators—the back bone of Indian industry, commerce, and wealth—will be turned out of the field, and this will tell heavily on the welfare of the country at large. As a rule a tenant cannot manage his affairs without the aid of a creditor advancing money to help him. The creditor in the absence of the tenant's right to sell his holding waits till the tenant finds an opportunity to repay the debt with interest. But this leniency will not be shewn when the creditor finds that being a little strict he may gain the property itself.

5. As the law now stands an occupant ryot enjoys all the benefits accruing from the landed interest. The tenure passes from generation to generation in the family as long as the rent is duly paid. Sub-letting is not also prohibited. Supposing that the right of transfer is necessary, it should be allowed with such restrictions as may be beneficial to the ryot and not injurious to the landlord. The provisions under notice far from meeting the aim and

object of the Legislature in settling the rights of the tenants and landowners, will, I fear, create a class of landowners at the expense of the zemindar and a class of tenants to the ruin of the existing class of ryots, or in other words the tenant right would be constantly changing lands.

6. Allowing free sale, and at the same time taking measures to guard against the holding falling into the hands of money-lenders, or such other persons as would necessarily occupy the position of a middleman, would be set with many difficulties. If it is necessary to make such holdings transferable, it may, without much prejudice, be made (in a public sale) with this restriction that none but the cultivating class, or those willing to cultivate, ought to be allowed to bid, and that the infringement of the rule would make the sale voidable. It would not be wrong to allow the purchaser occupancy right, which the former tenant possessed, if he be the eligible party under the rule. In respect of private sale, it may be provided that no sale should be valid without the consent of the landlord, or unless the purchaser be a settled ryot under the same zemindar and belongs to the class to which the vendor himself belonged.

7. The right of pre-emption provided for in the Bill in favour of the zemindar is not necessary. True, it is a safeguard against the holding falling into hostile hands But the difficulty would sometimes, or almost always, be insuperable. The tenant, with a view to enhance the price, would either bid through friends, or set up persons who have neither money nor willingness to purchase to bid, and thereby frustrate the aim of the Legislature, or compel the zemindar to take the property at an amount enormously greater than the real value. It is within the range of my experience that a cow not worth Rs. 10 was purchased at a sale in execution of a decree for Rs 700 under similar circumstances The decree-holder belonged to a class who are notoriously averse to animal, specially cowkilling. The judgment-debtor, taking advantage of this known fact, set up some butchers to bid, and the consequence, as the decree-holder would by no means allow a butcher to take the cow to kill, was as stated above. On the other hand, the ryot may be sold out for a nominal price, the intending purchasers may not bid, knowing that the tenure would of necessity pass to the landlord.

8. When a holding is purchased by the zemindar, he, under the rule of merger, may not have a right of occupancy; but he ought not to be fettered by the provision that the man to whom he re-lets would have that right as soon as it is let, simply because the tenant who previously held it had that right.

9. The provision for summary sales of tenures of tenure-holders or converted tenure-holders for arrears of rent, would, I fear, tend to promote litigation. Every such sale, rightly or wrongly brought about, would be followed by a suit to set it aside. I have scarcely seen a putni sale which was not contested by a regular suit. The law gives the parties the right of suit, and nobody rests himself contented when he has a way to try his chance to regain his property by means either fair or foul. The provision would no doubt facilitate speedy realization of rent, but there is no guarantee against abuses. It is hundred times better to have all matters settled before a sale takes place than to make a sale only to invite protracted litigation.

10. The provision that a settled ryot should have occupancy right to any land within the village or estate of which he is a tenant, irrespective of the duration of the holding, would not, I am afraid, work advantageously to the parties concerned. The zemindar would take care not to let any land to a settled ryot when he could help it, for fear of faring ill for the action, and the want of accommodation with land even for a temporary purpose would be keenly felt by the tenant. It is not fair that a tenant having occupancy right to a land in one portion of the estate, say in one district, should have that right in another portion of the estate or in another district, though the occupation be for a temporary purpose, and for a very short time. Right of occupancy should not be allowed to accrue to any land taken for any purpose, unless the tenant has acquired the right to that particular land under the general rule of occupation by 12 years' possession. The provision in question gives the tenant an undue advantage over the zemindar, and will, far from benefiting the interest of either party, create a hostile feeling and promote strife and litigation. The tenants in a body or by combination may be a match for the landlord standing singly; but then these agrarian disputes will find no peace for either the one or the other of the parties concerned.

11. In cases of enhancement the question of the nature of the holding would invariably be put in issue, and the 20 years' presumption in favour of the tenant would be too strong for the zemindar to overcome. True, this rule has been in force for the last quarter of a century, but experience tells us that there was scarcely a case of enhancement in which the plea of uniformity of rent for 20 years was not taken among others. If the present Bill passes into law without modifications, the natural consequence of this provision, as well as of certain others I have stated elsewhere, would be that measures will not be wanting to vary the rents or to concoct evidence to that effect, and nobody would know rest and contentment in consequence of the disputes and the litigations which would ensue.

12. The restriction as to enhancement of rent to certain proportions is not judicious. Suppose, for instance, two neighbouring tenants hold lands of similar descriptions and advantages under two different zemindars, one of whom is very strict in enforcing his right and another is quite indifferent. The former not foregoing any instance in which he could enhance the rent, gets ultimately an increase tenfold the rent previously paid. The latter after the lapse of a good deal of time seeks to enhance the rent, but finds himself in a position not

to get more than twofold through his own inactivity, although the land is capable of bearing tenfold as in the other case. This is certainly an inducement not to allow an eligible opportunity to slip, *i.e.* would generate a spirit of litigation to the harassment and annoyance of the parties concerned.

13. *Section* 50.—If a plaintiff fails to prove a suit for enhancement for want of evidence or otherwise, it does not seem fair to debar him from suing again for the next fifteen (15t years, although he may be in possession of proof in respect of the grounds of enhancemen) in the mean time.

14. *Sections* 141-4.—How the landlord is to proceed against the purchaser for the recovery of deficiency is not provided for in the section. A clause to the effect "by a suit or by summary sale" if added to the section, the deficiency would be supplied.

15. *Section* 59.—Six months' notice to quit to a ryot having no right of occupancy, and who is not a settled ryot, seems to be too long. Three months' notice before the expiration of the term, or the agricultural year, may serve the purpose. Six months are prescribed as limitation for such suits. Some provision as to the liability for rent for the year of litigation ought to be made. A suit may be instituted in the middle of the year and decreed before the end of it. The ryot, when ejected in execution of the decree before the expiration of the year, may very well say that he being a yearly tenant his rent did not become due till the end of the year, and that he being ejected before the rent becomes due, or the end of the year, his responsibility for rent has ceased; while on the other hand the zemindar may lose the rent for no fault of his. If the suit be immediate, and it is decreed and executed during the first quarter of the year, the zemindar may yet secure the rent by letting the land to whomsoever he pleases. If prompt measures are not taken, the question of the rent would be very difficult to solve. Any standing crop may be held liable for the year's rent; where, however, there is no such crop some provisions ought to be made on the point, having regard to the conduct of the parties with reference to the solution of the question. The rent may or may not, according to the circumstances of each case, be awarded by way of *wassilut* at the discretion of the court.

16. *Section* 79.—Some provisions ought to be made in respect of interest between the date of the institution of the suit and the realization of the decreetal amount.

17. *Section* 96.—When a tenant is ejected on unlawful grounds, or is compelled to abandon the land by oppression of the landlord, he has surely a cause of action to recover the land, but when he abandons the land of his own accord, and without making any arrangement for the payment of the rent, and the zemindar by reason thereof is compelled to let the land to somebody else, no latitude ought to be shewn to the abandoning tenant. His right of action in two years or six months, as the case may be, is not fair to the landlord nor to the new tenant who has *bonâ fide* acquired the holding and duly paid his rent.

18. Due service of summons is an important point in cases like these. The rules of the Civil Procedure Code ought to be strictly adhered to.

19. *Section* 163 (*F*).—The summons book of the nature used in the mofusil Small Cause Courts may be used with advantage. In appealable cases the court should take care to record the substance of evidence in a more comprehensive way than by taking short notes as in other cases.

20. *Section* 165.—The section is too hard for the tenant. Undue advantages may be taken by the unprincipled and irresponsible gomastas and naibs of the landlord. There may be cases in which excess rent is demanded, and yet the ryot may not be heard, unless he pays in the entire amount admitted. The effect would be that comparatively poor ryots will have no remedy. This section may be done away with.

J. E. S—Reg. No. 4794C—315—1-8-84.

Dated Sealdah, the 31st July 1884.

From—Baboo Mohendra Nath Bose, Judge, Court of Small Causes, Sealdah,
To—The Secretary to the Government of Bengal, Revenue Department.

I have the honour to acknowledge the receipt of your circular No. 5T—R, dated the 28th May 1884, with its enclosures. I have given careful attention to these papers, and I beg to submit the following observations for the information of His Honor the Lieutenant-Governor on some of the material questions raised therein.

2. I shall follow your circular letter to the Commissioners in dealing with the subject.

CHAPTER II.

3. *Para.* 4.—With reference to this chapter, the questions you put in your circular letter to the Commissioners of Divisions are—

(*a*) Whether the definition of "ryot" in section 5 (3) covers all classes of ryots, those holding under unregistered lakhirajdars as well as under the holders of revenue-paying lands.

I think the definition is exhaustive. I cannot conceive of a ryot who does not hold his land either immediately under a proprietor or immediately under a tenure-holder.

(*b*) Whether the presumption in section 5 (5) is, with reference to existing practice, a fair practice, and if not fair, what presumption of the sort would be fair.

I think a tenant who holds more than a hundred bighas of land can be ordinarily presumed to be a tenure-holder. As far as my experience reaches, excepting in very rare instances, the tenant sub-lets some portion or other of his land to other ryots, and thus in regard to the latter he stands always in the position of a tenure-holder.

(*c*) Whether the conversion of the sub-letting occupancy ryot (section 37) is a workable provision, and also likely to secure the objects for which it was devised.

The object with which section 37 has been devised is, as I understand, to restrain sub-letting by occupancy tenants. I do not think that object will be attained by the conversion alluded to in the section. When such a tenant sub-lets more than half his holding, unless he himself chooses to get himself registered as a tenure-holder, I do not see any person interested in bringing the circumstances to light. Nor do I think the tenant will bring himself into the higher class of tenure-holders, when by doing so he will subject his tenure to the provisions of summary sale for arrears of rent. It will be difficult for the landlord to ascertain the fact of such sub-letting, and therefore any action on his part to get such a holding registered is improbable. Besides, as far as my experience goes, the tenant oftentimes is obliged to sub-let his lands for temporary causes, such as minority, female succession, or the like. It would be hard on him in such cases to be converted into tenure-holder, subjecting his holding to summary sale. Then as to the scheme proving a check on rack-renting of the sub-lessees, I humbly apprehend its efficacy will be very small. The sub-lessees may not possess the right of occupancy; in that case their rents could be increased agreeably to the provisions contained in the chapter in regard to non-occupancy ryots.

CHAPTER III.

4. *Para.* 5.—When occupancy ryots can be, under the scheme proposed, converted into tenure-holders, the same limitations ought to be placed in enhancing the rents for both the classes. As regards ordinary tenures, their rents are regulated by contract. The permanent tenures, such as *patnis*, *mowrasis*, *howalas*, *&c.*, their rents cannot be increased under any circumstance. Then as regards ijarahs and temporary leases, their rents are completely regulated by the contracts entered into with the lessors. A few cases do arise, however, in which the rents of *chaks*, created for clearance purposes, and which remained unprotected by a potta, are sought to be increased. In such cases the court considering the outlay incurred, and the risks undergone, would only enhance the rent to what is fair and reasonable, but to my own experience never to double the amount. The maximum in section 8 is, in my humble opinion, rather too high.

CHAPTER IV.

5. *Para.* 6.—The 20 years' presumption rule, embodied in section 64 (2), is too late now to modify or alter. For nearly a quarter of a century the landlords and ryots have regulated themselves in accordance with that rule, and each has taken steps to strengthen or frustrate its legal effect. he landlord has introduced check dakhillas, whose counterfoil always remains with him, and therefore there is no great difficulty in him to prove that the ryot's rent has varied during the said period. In the case of auction purchasers there is, no doubt, some difficulty; but that has considerably been reduced in consequence of the road cess papers filed by the previous landlord. I am of opinion that the said presumption might be retained without prejudicing the interest of either the landlord or the ryot.

CHAPTER V.

6. *Para* 7.—If an "estate" or pergunnah be deemed too large in respect of the acquisition of the right of a settled ryot, I think it can be fairly confined within a village or mouzah In fact a ryot ordinarily comes to acquire lands near the place of his former

holding. Every object will be served if he is recognised as a settled ryot within his mouzah or village. I would therefore expunge the words "or estate" from the definition as contained in section 26(1).

7. *Para.* 8.—When the occupancy right is made transferable, there is every probability of money-lenders making purchases to a large extent. Outsiders or other ryots of the same estate will seldom purchase such holdings. Between the landlord and the money-lender will be all the competition, if any. If the landlord, under the provisions of the Bill, is allowed to retain the land to himself, or to let it to non-occupancy ryot, I think the same rights ought to be allowed to the money-lender also. There ought not to be a distinction between the two. As for a scheme for confining the purchasers to the cultivating class, I think it is sure to end in failure. The cultivating class is ordinarily poor, and they will not find capital to make any such purchases

8. *Para.* 9 —As a judicial officer, I had to handle several suits for enhancement of rent on the ground of "prevailing rate." The ascertainment of the said rent was always a vexatious enquiry. While the landlords would be producing collusive decrees in support of a higher rate, the tenant would be adducing a host of witnesses to show the ordinary rate of the place. In some cases it is also found that the rates paid by the ryots of the same village vary greatly from local causes, such, for instance, as the dry bed of a river, which is ordinarily very productive, would by competition always give a higher rate. To raise the rents of the surrounding lands to that rate would be manifestly unfair and unjust. It is always a difficult matter to ascertain these local causes, and consequently the enquiry generally ends in dissatisfaction.

9. I am not much hopeful regarding the price-lists serving as a good means for settling rates of rents. First of all it will be difficult to prepare correct lists for different parts of the country. The price varies much from the facility of communication with public marts or otherwise. Then the other quinquennial period with which the comparison is to be made has been left uncertain. An officer may for comparison take the period which immediately precedes the quinquennial, or the landlord may insist on taking a period half a century before, the result will be different and will depend upon the abilities of the parties to adduce evidence.

10. The gross produce test, in my humble opinion, was a more sure one. Unfortunately it has been abandoned by the Legislature. The ryots and the landlords are accustomed to it, as could be seen from the existence of *bhowali* and *bhag jote* tenures. If the landlord's share of the gross produce, however small, was once declared as rent due to him, many of the vexed questions that have been raised would have disappeared. As to the ascertaining of gross produce of any particular plot of land, I think it is not so difficult as it is considered to be. By means of local enquiry at the harvesting time, with the aid of assessors, if necessary, such ascertainment could approximately be made. This would have given the courts a tangible and satisfactory way of dealing with such cases.

11. *Para.* 11.—The difficulties noticed in this paragraph can be avoided, in my humble opinion, by providing measures which will prevent a settled ryot from taking lease of land contemplated in section 42 (1). I would suggest a provision like this, namely, that a settled ryot, if he would take such land which was previously let to a non-occupancy ryot, he would, by such an act, forfeit his personal status of a settled ryot. By such a provision the anomaly regarding the rate of settled ryots would be avoided, but it would place the landlord to some disadvantage in letting out his lands.

12. *Para.* 12.—I shall shortly give my experience regarding *bastu* or homestead lands. But before doing so, I am to observe that *bastu* is always a secured thing in the eye of a Hindu. To oust a man from his house and home is the greatest act of ignominy and oppression. For this reason, generally homestead lands remain protected.

13. In towns and urban villages the homesteads are mostly upon lakhiraj or *mohatran* lands. Such villages were originally established by a big zemindar, who settled respectable and learned men therein by making rent-free grants, and allotting portions of village sites in quit-rent for their homestead. Or it may be that such lands are given to daughters or other relations for their advancement. In such villages and towns like Utterparah, Kassypore, &c., the homestead land is always enjoyed in perpetuity at quit-rent or on rent-free title. Free transfers of such homesteads with the buildings and appurtenances are made, and seldom any attempt is made to enhance the rent of such holdings.

14. In Panchannogram, where holdings are held immediately under Government, no right of occupancy is allowed, and the under-tenant is evicted from his homestead, and his rent is liable to be increased upon competition by the landlord. The under-tenant, however, on such lands is never permitted to raise pucca buildings.

15. Then as to village sites of agricultural people, these generally go with their arable land. The *bastu* forms a portion of the occupancy holding, and greater rights are not permitted to be exercised in regard to it than what are allowed for the arable land. I am not aware of a tenant holding the *bastu* land independent of his arable land. Sometimes it may happen that a ryot evicted from his tenure retains his *bastu*, but that is always upon a fresh settlement with the landlord, who, to avoid public odium, allows him to remain on fair rent. Or it may be that the outgoing ryot may retain the *bastu*, as *korfa* to the new tenant introduced by the landlord. But in all cases, as far as my experience goes, his homestead is always respected, unless indeed he is a bad tenant.

16. It is desirable that *bastu* lands are protected by law from enhancements and *bastu* tenants from eviction.

CHAPTER VI.

17. *Para.* 16 —The inevitable result of the division of ryots into those of occupancy and non-occupancy classes will be that the non-occupancy ryot will ever remain a non-occupancy ryot, and will never be able to acquire the right of occupancy. In that sense, no doubt, the non-occupancy ryot will be placed at a disadvantage, under the provisions of the Bill, to which he was not formerly subject. Of course, by equalizing the maximum rate of rent for both the classes, most of the inconsistencies and apprehensions pointed out in your circular letter will be removed; but how that can be done does not come within my humble comprehension; without interfering with the rights hitherto enjoyed by the landlords, of settling new lands with the ryots in their own way, this cannot be done.

CHAPTER IX.

18. *Para.* 20.—I am of opinion that the provisions in section 96 will place the ryots to a disadvantage. Abandonment, until proved satisfactorily to the court, was never presumed in the case of an absent ryot. The courts restored such ryots to possession even after six or eight years. A ryot may leave an infant son, whose mother may remove him to her father's house, requesting his near relative to pay the landlord's rent. The latter may fail to pay such rent with a view to take the settlement of the land himself. The court in such cases always gave relief to the infant son. Such relief could not be given to him under clause 3 of section 96.

19. *Para.* 21.—In regard to measurement by the zemindar of lakhiraj lands within his estate, I do not think it would be proper to measure such lands plot by plot. It would be quite sufficient if such lands were measured by their external boundaries.

The ryots are used to the local pole, and such pole should be the standard of measurement.

CHAPTER XIII.

20. *Para.* 25.—Coming now to the important subject of *distraint*, I fear that the provisions in the Bill for distraint through the court will tell heavily upon the tenant in the shape of costs. The work of the courts will be tremendously increased, and this will necessitate increase of establishment. The process of the courts, as is usual in such cases, will be greatly abused in distraint of crops other than those of the defaulting ryot, and this will give rise to new litigations, much to the harassment of the court and trouble to the innocent party. I think it will be more to the advantage of both the landlord and the tenant if the power were left to exercise it, as it has hitherto been done, without the intervention of the court, of course under greater supervision of the executive and with sharper penalties attached for abuse.

CHAPTER XIV.

21. *Para.* 26.—The provisions in this chapter are all that could be desired. I have nothing to add in the way of improvement, unless it be a slight amendment of the proviso to section 168. A District Judge, and Additional Judge and Subordinate Judges have been placed in clause (*a*) on equal footing in regard to their final jurisdiction; whereas in the proviso the District Judge has been empowered to revise the proceedings of the other two under certain circumstances. This is an anomaly. I think the revisional power should lie with the High Court in such cases.

22. I have further to submit that the provisions in sections 164 and 165 will no doubt greatly facilitate the collection of rent on the part of landlords. If, however, as in section 164, the tenant, instead of pleading that money is due from him, were to plead that he has paid rent to a third person, some provision ought to be made to meet such a contingency. Instances have come to my knowledge in which two persons have obtained decrees for the same rent against the same tenant in two different suits—one in collusion with the tenant, and the other upon trial on merits. This can be obviated by providing that the courts in such cases should make the third party a defendant in the suit, and try the question of title to receive rent as between the two: and if the plaintiff succeeds, the court might decree the rent against such third person to whom the rent had been paid. Such a provision will check litigation and protect the tenant from paying the same rent twice over.

C. E. G.—Reg. No. 4898C—315—4-8-84.

No. 35, dated Chuprah, the 25th August 1884.

From—Roy Baboo Krishna Chundra Das, Bahadur, Third Munsif, Chuprah,
To—The Under-Secretary to the Government of Bengal, Revenue Dept.

With reference to your letter No. 1544—843LR, dated the 20th instant, I have the honour to submit herewith my opinion upon the revised Tenancy Bill of 1884.

I and Baboo Grish Chundra Chatterjee, Second Subordinate Judge of the station, held meetings to discuss the provisions of the Bill; the report is therefore submitted in the plural form.

I. *Transferability of occupancy tenures by sale, mortgage, &c.*—If we take the zemindar in the light of a mere collector of rent, the law ought to afford him security and facility for speedy and due collection of rent. An absolute power to the tenant to sell his occupancy holding would be injurious alike to ryot and zemindar. Any ryot ill-disposed to the landlord can introduce a discordant element in the village. The right of pre-emption would not give any substantial advantage, and it would place the zemindars on the same footing with the public at large, whereas, being the agent responsible for the collection of rent, the landlord ought to have greater immunities.

We suggest therefore that the tenant's power of selling occupancy holding ought to be confined to the village cultivators or resident ryots, *i.e.*, the people who would most likely be settled with in cases of vacancies. Privilege of introducing outsiders be conferred only with the zemindar's permission. If the above restriction be considered opposed to the principle of freedom of contracts, we beg to suggest that transfers be legalized only on proof of sufficient necessities.

At auction sales the zemindars may have the privilege of a co-sharer in a civil court sale. Before the introduction of the Rent Bill there was no serious quarrel on the subject of transferability of occupancy holdings, and the number of suits involving such questions was not large.

II. *Settled ryot.*—Settled ryot is a new idea introduced into the Bill. The ryots never thought of asserting the privilege conferred by the section, and litigation on this point was either very rare or absolutely nil. It is not necessary therefore to introduce a third class of ryots as settled ryots. The opinions of Hon'ble Kristo Das Pal and the Maharaja of Durbhunga are entitled to very great weight on this point. Such a measure would plunge the country into litigation, which never will cease within 50 years to come.

Record of rights.—A public record of tenures, and the rights of the holders thereof, may in the long run prove beneficial to the country, and cut short constant litigation; but considering the number of rent-suits instituted and disposed of within the last decade, the decrees of the courts passed *ex parte* and on contest are an important factor in considering the question whether a record of right is absolutely necessary. It is only in cases of agrarian disturbances and combination by the ryots of a village for the purpose of withholding rent that such a measure may be adopted at the instance of either the zemindar or the ryot when a ryot contests the matters recorded, and a regular enquiry and judgment is passed; that judgment ought to be conclusive evidence between the parties. When, however, the record is made without the ryot entering opposition, the entries should be presumed to be correct, and they shall have the force of the decrees passed *ex parte*. Settlement of rent cannot be satisfactory, considering the large scale of enquiry prescribed, the variable nature of tenures, and the difficulty in the way of an accurate classification. If the records provided for in section 3, Chapter X can be successfully made, there can be no doubt of the benefit accruing from it. But the difficulty in the way of preparing such a record is very great, and it would be necessary at certain intervals—almost every couple of years—to revise such a register to meet the changes that may take place in the interval. An attempt to prepare such a register would in the first place engender quarrels and litigation, which might not at all arise. The rights of lakhrajdars may be indirectly called in question by the zemindar through his subordinates or dependents.

Clause (b).—In order, to enable the Collector to classify the tenants, the holdings which constitute the estate must first of all be ascertained. This will involve the addition of another column. Unless the holdings are first determined, it would be impossible to carry out (*b*), (*c*), (*e*), (*f*), (*g*) and (*h*). Situation in clause (*c*) is ambiguous. Ascertainment of boundaries would involve serious quarrels, and in some districts, where fields have no demarcation lines or *als*, boundaries can scarcely be properly made out.

Notification.—Official Gazette alone not sufficient, should be published at the village zemindari, kutcharry, thana, all civil and criminal courts, rural sub-registry office or post offices, as to procedure laid down in the Bill. On this head we have nothing particular to say or object to.

Record of private right of the landlord.—As to record of zemindar's khamar or khudkast or neej-jote lands, this step is absolutely necessary, especially in Behar. Zemindars try to include mal lands within this designation, and try to eject ryots by calling ryoti land their khamar, and thus to prevent accrual of right of occupancy.

Enhancement presumption.—Considering the time that has elapsed from the passing of Act X of 1859, which introduced for the first time this presumption, the period may be extended to 30 years. In case of *bonâ fide* auction purchaser of estates, when the court entertains a reasonable doubt that the ryot is sided by the out-going zemindar, this presumption may not be made. In the case of tenure-holders holding upwards of 100

bighas of land there ought not to be a hard-and-fast rule as to this presumption. Let the courts be left to make presumption according to the circumstances of the case. Grounds of *enhancement* in case of tenure-holders and occupancy ryots ought not to be the same. An additional ground of enhancement, calculated upon a margin of 10 per cent., may be laid down in the case of tenure-holders of 100 bighas of land and upwards. In assessing rent on this ground, special improvements effected with the money of the tenure-holder should be taken into consideration.

In the case of non-occupancy ryots, let the zemindars have, as at present, the right to eject or to sue for enhancement on the grounds set forth for occupancy ryots, with the distinction that tenure-holders and non-occupancy ryots' rent may be increased 50 per cent, whereas those of occupancy ryots to not more than 25 per cent. Our experience is that, before coming to court, the zemindar does not raise his claims to more than 25 per cent for the annual jumma of ordinary occupancy ryots.

Freedom of contract as to enhancement ought not to be restricted, but the contract shall always be in writing and registered, and strict provisions may be made for the registering officer explaining the contract in such cases to the tenants.

Grounds of enhancement —First ground, prevailing rate. The determination of prevailing rate is not easy. In determining what is the rate of rent prevailing among occupancy ryots, the court may take into consideration, in the matter of assessment of rent, the status of ryots holding lands in the village upwards of 20 years, and those who have recently acquired rights of occupancy. In fact, the placing of all occupancy ryots on the same footing may tell hard upon ryots of longstanding. Court should be careful not to place any weight on leases at high rates got up for the purpose.

Rise in the price.—This is a good ground of enhancement, and ought to be left as it is A correct table of prices is essential, *i e*, a table prepared by a responsible officer. Price of labour is to be considered. Fifteen years' average ought to be the basis of calculation as prepared in the first Bill. The grounds of enhancement given in the Bill may comparatively afford some facility to the zemindar in the way of obtaining enhancement of rent, but the practical application of the law would nevertheless be difficult.

Procedure. Section 161.—Putwarie should be added. As to verification of plaints, zemindars residing within the local limits of the court ought to verify their plaints and written statements themselves, unless the court, in the exercise of proper discretion, otherwise directs. Exception may be made only in the cases of *purda-nasheen* women. It is suggested that the words "after due and careful inquiry" should be added to the form of verification prescribed in the procedure Code.

163 (*a*). *Section III.*—As to set-off ought not to apply except when the set-off refers to an ascertained sum on written agreement arising out of the relation between the landlord and tenant in respect of the lands comprised in the tenure (examples, as when for indigo cultivation a planter, who is also a ticcadar, takes ryot's lands).

(*b*) Word extent in the second part of the clause ought to be struck off.

(*e*) Add —The court may, at its own discretion (example, analagous cases), ask the party to file written defence.

(*g*) But discretion should be left to the courts in the matter of the payment of the money. Section 164, casting the burden of proof upon the third party in every instance, may work injustice. Let us suppose the case of an auction purchaser of the rights of the former landlords as in the case of one whose rights have been declared by decree of court, or that of heir apparent, the plaintiff being the *quandom* zemindar or a person having no title to the property. When the ryot comes and says that the rent is due to the purchaser, &c., the stranger is at once alleged to become plaintiff and take the burden of *primâ facie* proof. Section 77 of Act X allowed intervention by any party, but this section very well limits that power of intervention by leaving the ryot the option of pointing out the third party. We think intervention ought to be allowed in cases where the ryot points out the third party. A fortnight's notice in such cases would be sufficient for intervenor to appear and contest. The court will then, for the purposes of the suit, determine who is entitled to the deposit, and refer either the plaintiff or the intervenor to go to the civil court and quarrel over their title. In such cases no appeal ought to be allowed If the person pointed out by the tenant does not appear, or the objection is quite frivolous, the tenant may, in the discretion of the court, be held liable to damage not exceeding 12 per cent. of the money deposited, and the costs incidental upon the plea.

Clause 3 with clause 4 is calculated to increase litigation. It provides for an intermediate suit between a simple suit for rent and a title suit. They should be eliminated under the circumstances and provisions stated above.

Section 168.—As more than half or about two-thirds of the rent-suits are below Rs. 50, in giving final powers to the Munsif in suits up to Rs. 50, the section must be very carefully made, and the work thrown on the officer should not be heavy. In the latter case there would be a tendency to steer over the work, consequent upon heaviness of the file. Proper distribution and allotment of work should be made to ensure justice and avoid delay.

171 (*e*). Commencement of proceeding vague; should be after service of summons or any notice of the institution of suit

176 (*c*). *Protected interests* —Any lease of land is ambiguous. Should be lease given by the defaulter or his predecessor in interest

(*d*). Is objectionable. Amounts to giving occupancy rights to the sub-tenants against zemindars; should be taken off.

(c). Only allowed on public policy. Improvement and religous feeling should be taken into consideration. These considerations do not hold in case (d). The sub-tenants with occupancy rights will, when his tenure is not protected, try to buy the holding, and thereby keep off outsiders and money-lenders.

(e). Will introduce much confusion and quarrel; it had better be expunged. In such cases protection is not given by the Revenue Sale law.

(178). The attachment and proclamation may be simultaneous. This will compensate the delay consequent upon sale—first, with registered incumbrances; second, free of such incumbrances.

A landlord's power to sell tenures of the debtor, other than that in arrears, should not be restricted to the inquiry prescribed by High Court Circular for settlement of proclamation, except in cases where the value of the tenure or property sought to be sold may exceed Rs. 500, or where the decree exceeds Rs. 100. This will facilitate realization of rent generally.

There is no objection to the incorporation of Putni law. It is also suggested that big tenures, such as hawalas, nim-hawalas, gantys, &c., which are generally permanent transferable tenures, and which are held by middlemen, may be subjected to the Summary Sale law, as also tenures consisting of 200 bighas or upwards. The tenures engross a greater part of the zemindaries, and any withholding to pay rent on the part of the aforesaid tenure-holders involves the zemindar in difficulty, and subjects his zemindari interest to the risk of sale.

Distraint—In the Distraint law there ought to be an exception in favour of zemindars as to the crops of ryots who have no settled home, or who are wandering or semi-nomadic cultivators. In such cases the zemindar ought to be empowered to distrain the crops at his own instance, and then sell the crops through the court. Simultaneously with distraint in such cases the zemindar should send in a verified application in the form of a notice to the court, stating the particulars provided for in the new law.

Surrender or relinquishment.—The old law as to written notice of relinquishment should be kept as it is. Verbal notice would give incentive to fraud and perjury on both sides. The presumption provided for in the Bill will only hold good in case of private written notice to the zemindar. Practically, pleas of relinquishment are taken by zemindars generally, and attempted to be proved by false witnesses, to enable them to maintain the new settlement which they make for their own benefit.

Manager.—The appointment of a manager is unnecessary. Such a course would be ruinous alike to zemindars and ryots. The idea of appointment of manager originated with the inconvenience to ryots consequent upon the increase of number of sharers in a zemindari, and the indefiniteness of such shares. The Bill, by enabling tenants to deposit rent as provided in clause (c), section 73, does away with the inconvenience felt by ryots. In Behar, considering the large number of sharers in small mouzahs, the appointment of manager would ultimately leave no profit to insignificant sharers. The appointment of an officer to take deposits within certain local limits, where the number of deposits unusually increase, or where there is any disturbance leading to increase of deposits, virtually serves the end for which a manager is proposed to be appointed.

Sub-letting. Section 5, *clause* (5).—The word part in clause 5, section 5, is too general. We suggest that the phrase one-fourth of the holding should be substituted for the word part. Whether letting in bhag-jote is to be considered sub-letting, our opinion is that letting in bhag-jote should not be considered sub-letting, except when the zemindar's share is above 8 annas of the produce.

Section 37, *clause* (a).—Abuse of the privilege granted by this clause is likely to be made. As for instance, by purchase in the name of a minor son or a female member. The privilege ought to be accorded to real owners who are actually and *bonâ fide* unable to cultivate or manage the cultivation, that is to say, where the inability is real and not apparent. No objection to other parts of the section.

(b) As a matter of public policy, free contracts ought not to be discouraged, but the sub-letting of zemindaris by the proprietors, *i.e.*, the creation of ijars or ticcas, kutkenas, and dur-kutkenas, and, third, ijars and putnies and dur-putnies, lead to no small oppression over ryots as a class, especially in cases where the under-tenures are created at the gross jama without leaving margin of profit to the sub-tenure-holder. We know of many instances in which tenures like the above are gradually created with no apparent profits to the taker of the sub-tenure, and these sub-tenure-holders, ticcadars, by force or harassing litigation compel ryots to pay an increase by the name of ijardari or huq-ticcadari. Villages which had been strangers to litigation become thus the scene of quarrel, and each party strains every nerve in the contest to secure his respective ends. The consequence is litigation, and, as a matter of fact, whole villages become involved in litigation on the creation of tenures like ticcas, &c. The question then is, how can this creating of ijaras, ticcas, be checked to legitimate limits? This is a question fraught with difficulty, but some check can be put on this practice by treating contracts which have less than 10 per cent. profit on the actual gross collection as void. If the superior holder has always to loose something in the bargain, he will think twice before he creates the lease, and the inducement, in fact the absolute necessity, for increasing the rent on the part of the taker of the lease will become less. It is also suggested that some measure be adopted to compel superior holders to give correct accounts of the gross collection of mouzahs to check the giving of swelled up and false jamabundies.

2. Ticcadars for tenures of five years and less may not be given the power to enhance or to eject ryot. Butwara is also a fruitful source of litigation in Behar. It is therefore suggested that, at the time of each butwara, the Collector should prepare a register of tenures, *i.e.*, a record of rights, binding *primâ facie* or conclusively the malik and the ryot. This provision will become necessary in the law if settled ryots, as propounded in the Bill, be done away with. In the jamabundies which they file for the purpose of butwara, maliks generally ignore ryoti holdings by styling the lands their *khudkast*, and produce these papers (unsuccessfully though in most cases) to dispense with the jotes of ryots.

Amalgamation.—Cases are not unfrequent in which the question arises whether lands newly settled with the ryots having occupancy right over other lands are to be treated as part of the jote in which the ryot had acquired a right of occupancy or a distinct jote, and the determination of the issue becomes difficult It ought to be provided therefore that, when the newly settled land is not more than the area of the original jote, the addition is to be deemed as amalgamation of all lands into one occupancy holding, unless the zemindar takes a separate kabuliyat or gives a potta for the newly settled land.

Homestead.—In Behar bastus are not generally held as integral portions of jotes. They are held separate, and the sale or transfer of the jote does not affect them. Homestead lands are for the most part held free of rent where the occupier is a man of superior caste, or where his services are often called into requisition by the zemindar ; where the occupant ryot is old to the village, the rent payable by him upon his homestead is generally very low. Homestead lands of ryots in Behar lie within defined boundaries, generally called the *tola*, and the lands of tolas have no connection with the agricultural holdings of the persons living in the tola or bustee. This is also the case in Orissa. In Bengal there may be instances of the village bastu land, but these are rare. These tenants, bastus are generally on lands which forms a portion of his jote. In the latter case bastus should be subjected to all the incidents of the jote, but in the form we think that the bastu ought not to bear any relation to the kast or jote. These bastu lands, in the absence of express written contracts, should be treated as mokurree (fixed rental) and permanent.

CHAPTER IX.

Improvements.—Sub-clause (*b*) in clause (2) section 87 is indefinite Cultivation by artificial irrigation is not much resorted to in many of the districts of Bengal In Behar, where the soil is drier and harder, watering of fields by artificial means becomes more or less, necessary. Here the landlords rarely raise objections to ryots digging wells on their holdings. We have no objection to the provision of section 38 with respect to an occupant ryot's privilege for making improvements. Certain restrictions to be put having regard to the cost of the improvement compared with the selling value of the holdings. We suggest that an occupant ryot would not be allowed to make improvements which would cost more than one-fifth the selling price of the holding sought to be improved In the case of his exceeding the limits, he shall forfeit his claim to compensation calculated on the amount expended in excess. A provision is to be added that, in the event of surrender or abandonment of his holding, the ryot would not be entitled to compensation for making improvements.

Clause (2), *Section* 90—Will tell hard upon landlords ; the hardship to some extent might be mitigated by making the intended law of payment of compensation not applicable in such cases.

KRISHNA CHUNDRA DAS,

Rent suit Munsif, Chupra.

E. G.—Reg. No 6083C—327—28-8-84.

No. 12, dated Burisal, the 19th July 1884.

From—Baboo Chandi Charan Sen, First Munsif of Burisal,

To—The Secretary to the Government of Bengal, Revenue Department.

In reply to your letter No. 9T—R, dated 5th ultimo, I have the honour to submit the following remarks on the revised Bengal Tenancy Bill:—

CHAPTER II.

Conversion of Ryoti holdings into tenures.

Section 5, *clause* (5), *and Section* 37.—As regards the practical effect of conversion of sub-letting occupancy ryot into a tenure-holder, as provided by section 37 of the Bill, I beg to observe that the custom of such conversion has been prevailing to a very great extent in several districts in Bengal: and instances are not wanting in which the highest judicial tribunal in the country has been consciously or unconsciously giving full effect to it. Rai Krishna Das Pal Bahadur, in his memorandum of dissents, observed: "The conversion of an occupancy ryot of a holding, the area of which exceeds 100 bighas, into a tenure-holder is, in my opinion, still more arbitrary * * * * * * * * * Surely it cannot be contended that the conversion of the hundred-bigha jotedar into a tenure-holder, under an edict of the Legislature, is consistent with the ancient or existing land law of the country. In so far, it is a direct encroachment upon the rights of the proprietary class." But it can be very easily shown that both under the ancient as well as the existing custom of the country, this system of conversion of ryoti holdings into tenures has been very extensively obtaining in different parts of Bengal.

2. The presumption that a tenant who holds a very large quantity of land, which is more than what he can cultivate himself, is an intermediate holder and not a ryot, was recognized by the Calcutta High Court in the case of Baboo Dhanput Sing *vs.* Baboo Guman Singh, decided on the 5th May 1864 (*vide* Revenue, Judicial and Police Journal, Vol. II, page 267). In this case the Hon'ble Justices Messrs. W. S. Seton-Karr and E. Jackson observed:—"The question is whether the tenants are ryots or tenants intermediate between the proprietors and ryots. We cannot agree with the learned Counsel for the respondents that they are khodkhasta ryots. It is very difficult to lay down any general interpretation of the word ryot. As a general rule, they are the cultivating tenants, but they may not cultivate at all themselves; they may cultivate their lands by hired abourers or by under-tenants. In this case the amount of land included in the tenure is, we think, sufficient evidence that the tenants are not ryots."

3. In Backergunge numerous holdings, which had been undoubtedly ryoti holdings at the outset, were in the long run converted into tenures by the customary law, in consequence of the different portions of the land comprised within them being sub-let to different persons; and the practical results of such conversion can be better expressed in the words of the Hon'ble Major E. Baring in his speech in the Legislative Council, dated 13th March 1883, when he said—"Why is it that in Backergunge and in some of the adjoining districts such a remarkable degree of prosperity exists? The reason is not far to seek. 'Backergunge,' an official report says, 'is essentially a district of peasant proprietors.' Almost all the actual cultivators have to a certain extent a proprietary right in the land they cultivate."

There can, I think, be no doubt that in introducing the provision contained in clause 5, section 5, and in section 37 of the Bill, the Legislature have simply attempted to give legislative sanction to the existing custom of the country. It is quite apparent that both from a theoretical point of view, as well as for practical purposes, there has been an absolute necessity for giving legislative sanction to this longstanding custom.

4. From a theoretical point of view, the necessity for an express enactment on the subject will be easily perceived when we bear in mind that, "if the community progresses, the law must needs expand, and become more and more an exact expression of the economical habits of the people."

5. But in order to fully realize the practical necessity for such legislation, I would bring to your notice a very curious instance of judicial vagary that took place in the district of Julpigoree immediately before the year 1878.

6. Although Act X of 1859 was in fact a mere cumulative enactment, yet the subordinate courts (especially the revenue courts) were taught to look upon it as an exhaustive law by which all questions relating to the respective rights and privileges of landlords and tenants were to be determined. A Deputy Collector of Julpigoree, a district in which Act X of 1859 is still in force, being under the impression that Act X of 1859 was the sole guide for determining the mutual rights of landlord and tenant, committed an egregious blunder which was calculated to produce a very great mischief had it not been timely prevented by the worthy Deputy Commissioner of that place.

7. The tenures and under-tenures in the district of Julpigoree are designated as follow, viz. jotedari, chukandari, dur-chukandari, mulandari and dur-mulandari, &c. Some of these tenures had been in their original inception nothing but ryoti holdings, but in course of time they had been subsequently converted into intermediate tenures. A jotedar brought a suit to eject a chukandar under clause 5, section 23 of Act X of 1859 in the Court of the Deputy Collector of Julpigoree. In this case the Deputy Collector came to the conclusion that jotedars, who hold land of a zemindar, are necessarily a class of tenants who

alone can acquire the right of occupancy: consequently the chukandars who hold land of jotedars, and mulandars who again hold land of chukandars, are different classes of under-ryots, and as such are incapable of acquiring a right of occupancy, inasmuch as it has been held by the High Court that two parties cannot acquire such right in the same land. Having arrived at this conclusion on the assumption that Act X of 1859 was an exhauftive law, and a sole guide to the determination of the mutual rights of landlord and tenant, the Deputy Collector of Julpigoree began to treat the chukandar and mulandar as mere tenants-at-will, who are liable to be ejected from their holding at the option of the jotedars. In this way several jotedars succeeded in ejecting many longstanding chukandars and mulandars, some of whom had spent considerable sums in erecting houses and gardens on the land they had held. At last this sort of decision of the Deputy Collector created some sensation in the district, and the matter was brought to the notice of the Deputy Commissioner, a military officer, who, without ascertaining whether the conclusion arrived at by the Deputy Collector was correct, summarily instructed his subordinate to dismiss such cases in future, inasmuch as they entailed a great hardship upon the chukandars and mulandars.

8. The effect of this order was that the jotedars began to bring regular suits for ejectment against the chukandars and mulandars in the Civil Court. I remember that in 1879 some of these ejectment suits were instituted in my Court while I was Munsif of Julpigoree. It was in connection with one of these cases that I came to know the circumstances I have just stated: and considering the state of things which had for some time been prevailing there, I had to write a very lengthy judgment, in which I endeavoured to show that neither the chukandars nor mulandars were ryots in any sense of the terms; that they were to all intents and purposes undertenure-holders; that the provision contained in section 6, Act X of 1859 was not applicable to jotedars, and that Act X of 1859 was a mere cumulative enactment, and was never intended to override the local custom of any district. My decision was fortunately confirmed by the Appellate Court.

9. From my personal experience of some of the districts in Lower Bengal, I have found that holdings which were in its original inception mere ryoti holdings, were in the long run converted into tenures by the practice of partly or wholly sub-letting the land comprised in them. I look upon this system of sub-infeudation as the necessary outcome of the economic laws of growth and development; and it would be rather an arbitrary measure to try to prevent its growth by withholding legislative sanction from it. The provisions contained in section 5, clause 5, and section 37 of the revised Bill are not in advance of the wishes and feelings of the people in general; and consequently Rai K. D. Pal Bahadur, in his ardent desire to protect the zemindari interest at the sacrifice of the customary rights of the ryots, has fallen into a grave mistake in looking upon these provisions as mere "arbitrary edicts of the Legislature."

10. Almost in every district the land is being held by several classes of tenure-holders and undertenure-holders from generation to generation, without any pottah or express engagement: and, according to the custom of the country, each of these classes of tenure-holders or undertenure-holders are looked upon as middlemen or intermediate holders. But if the status of these tenure-holders and undertenure-holders, who were most probably at the original inception of these tenures no better than ryots, is not recognized by express legislation, a very similar state of things to that which took place at Julpigoree is likely to take place in other districts also. Besides, under customary law there is no limit to the illimitable chain in the system of sub-infeudation existing in the various districts. Each sub-lessee or ryot in Backergunge by sub-letting his land may in the long run become a tenure-holder himself. But if there is an express enactment on the subject, a definite limit will be necessarily put to this sort of conversion—a practice prevailing in several districts in Bengal.

11. In paragraph 4 of your letter to the Divisional Commissioners, you have observed that the Government of Bengal, in proposing in their letter No. 972, dated 27th September last, that an occupancy ryot who sub-lets half his holding should be converted into a tenure-holder, had in view a twofold object, viz., first, of discouraging the purchase of occupancy holdings by money-lenders or speculators; and secondly, when transfers were made, of affording a protection from undue enhancement of rent to, and of facilitating the acquisition of occupancy rights by, actual cultivators of the soil. I have not a shadow of doubt that these two objects will be partially accomplished by converting sub-letting occupancy ryots into tenure-holders. But the general apprehension that large numbers of occupancy holdings would fall into the hands of money-lenders as soon as these holdings will be declared transferable by the proposed rent law appears to me to be utterly groundless. In Chota Nagpore and in some other districts the mahajans or the money-lenders may feel inclined to purchase ryoti holdings. But in several districts of Eastern Bengal, such as Backergunge, Noakhally, Pubna, Dacca, there is not the least probability that a mahajan or a money-lender would ever think of purchasing any occupancy holding. There are various classes of mahajans in each district: and the habits and conditions of that class of mahajans from whom ryots in these eastern districts generally borrow money preclude all possibility of any ryoti holding falling into their hands. If we are to examine who are the mahajans from whom ryots borrow money in Backergunge, we find that in the interior of the district the gomasta or tehsildar of each zemindar opens a sort of loan office which is called dadani tahabil (fund for loan). These gomastas or tehsildars create this fund for loan by taking Rs. 50 from a village widow; Rs. 10 from a maid servant of a well-to-do zemindar; Rs. 200 or 300 from the female members of a zemindar's house. Now neither a maid-servant nor a village widow, or a female dependent of a

zemindar's, who contribute money to this dadani tahabil, is likely to think of purchasing ryoti holdings. It was on this account that, in those districts where ryots borrow money from this class of mahajans, there is not the least apprehension of ryoti holdings falling into the hands of money-lenders. I shall have occasion to say a few words more with regard to this apprehension from money-lenders while discussing the question of transferability of occupancy rights.

12. In connection with the subject of conversion of ryoti holdings into tenures, I further beg to observe that clause (*b*) of section 37 of the revised Bill is not only unnecessary, but is calculated to introduce an anomaly into the position of these converted tenure-holders. It would be better to omit clause (*b*) of section 37 from the Bill, and to make the provisions of chapter III applicable to these converted tenure-holders in respect of enhancement of rent also.

There is no necessity to place any restriction on sub-letting for the purpose of discouraging it. The provision contained in section 38 of the Bill is not calculated to work well in the agrarian economy of the country. The best measure to be adopted for discouraging the sale of occupancy rights is to establish an equality between the occupancy and non-occupancy rate of rent as suggested by the Government of Bengal in their previous correspondence on the subject. I will state my reasons showing the necessity for enforcement of this principle of equality of rates while discussing the provisions contained in chapter VI of the Bill.

13. The Government of India in paragraph 6 of their letter observed:—"The expediency of giving these privileges as part of a scheme for discouraging sub-letting, and the general effect of this distinction, should be considered * * * and as to the possibility of giving effect to it by means of a system of registration as contemplated by the Bill." I think there will be very little difficulty in giving effect to the scheme by means of registration. But the practice of sub-letting can hardly be discouraged by any other means except by establishing equality of rates of rent as I have just suggested.

CHAPTER III.

Tenure-holders.

14. I think the difficulty in distinguishing a ryoti holding from a tenure will be greatly obviated by referring to local custom; and section 5, clauses (4) and (5), will undoubtedly afford considerable facility in enabling the court to make such a distinction.

15. Section 7, clause 1 of the revised Bill, which provides that rent of a tenure-holder may be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity can hardly be made applicable in the case of enhancement of rent of tenure-holders. In the same neighbourhood two exactly similar tenures may be found—the annual rent payable in respect of one may be Rs. 10, whereas the annual rent or jama of the other may be Rs. 50. Now the rent of the former tenure can only be enhanced up to Rs. 20 under section 8 of the revised Bill, consequently the rent payable in respect of a similar tenure in the vicinity is no standard for the enhancement of rent of tenures. There hardly exists any prevailing rates of rent, or any customary rent in respect of tenures and under-tenures.

The rent of tenure-holders should therefore be enhanced up to such limit as the court thinks fair and equitable. The Privy Council has also taken a similar view, and held that the rent of the dependent talooks or intermediate tenures can only be enhanced on equitable grounds alone.

CHAPTER IV.

Ryots holding at fixed rate.

16. The provision that in any suit, if it shall be proved that the rent at which the land is held by a ryot has not been changed for a period of 20 years before the commencement of such suit, it shall be presumed that the land has been held at that rate from the time of the Permanent Settlement should be retained in the Bill intact, without the slightest alteration and amendment in it; and that the retention of such a provision in the Bill is absolutely necessary will clearly appear when we look into the state of things which now prevails almost in every part of the country.

17. The zemindar, the dependent talookdars or other intermediate holders very frequently allow their zemindaries or intermediate holdings to be put to sale for arrears of its own revenue or rent, and they purchase it again *benami*. Cases of such collusive sales are very frequently pleaded in our courts whenever a zemindar or an intermediate holder attempts to eject any ryots or under-tenants. In the eastern districts an intermediate holder, failing in all other attempts to eject a tenant or to enhance his rent, causes his own tenure to be sold in execution of a decree for its own arrears in collusion with the superior landlord; and then purchasing it *benami* sues the undertenure-holders or ryots for ejectment, and thereby compels them to enter into a fresh engagement at an enhanced rate of rent. Instances of such collusive sales and *benami* purchases are very frequently brought to our notice. An ignorant ryot cannot be expected to be capable of producing the rent receipts of the last 90 years. Consequently, after such collusive sales and *benami* purchases he would be entirely placed at the mercy of his unscrupulous landlord if this

statutory presumption be omitted from the Bill. It is extremely difficult for a ryot to prove the continuous existence of his holding at an uniform rate of rent from the time of the Permanent Settlement by any documentary evidence. But continuous occupation of land for 20 years can be proved with less difficulty by the direct testimony of living witnesses. On the other hand, the landlord who carefully preserves his *jama-wassil-bakee* or other zemindari papers can easily prove any change in the rate of rent during the last 90 years by the documentary evidence in his possession.

18. Rai K. D. Pal Bahadur, in his memorandum of dissent, observes that—"Whatever the necessity of such a provision at the time of passing Act X of 1859, that necessity, it cannot be denied, no longer exists. The ryots have advanced in intelligence and independence, and the practice of granting printed rent receipts have become common in many parts of the district."

19. But I am sorry to be compelled to observe that the practice of granting printed rent receipts is not so common as it is supposed to be by the learned advocate of the zemindari interest. Even admitting, for the sake of argument, that the practice of granting printed rent receipts has become quite universal during the last decade of the present century, yet that would not do away with the necessity for such a presumption when its omission would necessitate the ryots to produce the rent receipts of the last 90 years. I think Rai K. D. Pal Bahadur would not venture to say that the practice of granting printed rent receipts has been prevailing during the last 90 years Again, in granting these rent receipts many unscrupulous landlords practice great deception upon the ryots. I came by an account of a case in which a landlord of this district, with a view to ruin a tenant, granted him a rent receipt which had been purposely antedated. The ignorant ryot without any hesitation whatever took the receipt and paid his rent; but afterwards the landlord sued the same ryot for the rent for which that antedated receipt had been granted. The ryot pleaded payment of rent and produced the receipt he obtained from his landlord; but the landlord denied having granted such receipt, and in order to prove that they were false documents, produced a copy of a deposition before a judicial officer showing that on the date on which the receipts were said to have been granted, the grantor had been attending the court of a judicial officer as a witness. The Deputy Collector pronounced the receipts to be false, and most probably granted sanction for a criminal prosecution. This is the way in which the majority of the landlords or their gomastas deal with the poor ignorant ryots.

20. Rai K. D. Pal Bahadur further observes, in his memorandum of dissents, that the effect of this provision is disastrous to the zemindar, and it bears very hardly upon auction purchasers, who are often unable to get possession of the zemindari papers of their predecessors. But it is very easy for a *bonâ fide* auction purchaser to cite his predecessor as a witness, and cause him to be summoned to produce his zemindari papers in any suit for ejectment or enhancement, whereas it is extremely difficult for a ryot to protect his rights when sued by a *benami* auction purchaser for ejectment, after his landlord had caused the property to be put to collusive sale and purchased it *benami* himself, simply with a view to get rid of incumbrances. The benefit likely to be derived by zemindar or auction purchaser in the absence of statutory presumption is very little or almost nominal; whereas irreparable injury will be done to the ignorant ryot if such a wise and salutary provision be omitted from the future Rent law.

21. The proposals for limiting the currency of this presumption for a certain length of time after the passing of this Act is also fraught with great danger to the ryots. On careful examination it will be found that it does not do any injury to the zemindar, whereas it does substantial good to the ryot, and at the same time affords material help to a judicial officer in enabling him to form a correct estimate of the evidences before him.

CHAPTER V.

Occupancy Ryot.

21(*a*). In paragraph 7 of your letter to the Divisional Commissioner, you have asked whether the capacity of the settled ryot to hold on an occupancy title land in possession of which he has been let, should extend over an entire estate, or should it cover only a portion of the estate, &c. With reference to this question, I beg to observe that it is not in Behar only, but in Lower Bengal also, though in quite a different way, that the zemindars frequently try to defeat the growth of occupancy rights in ryots. In Behar it is done by shifting a ryot from one field to another; but in Lower Bengal the landlords not unfrequently compel ryots, of not less than 50 years' standing, to execute kabuliats according to the terms of which they are turned into mere tenants-at-will, although they might have acquired occupancy rights just at the passing of Act X of 1859. In course of business several cases were brought to my notice, in which it was found that kadami khodkhasta ryots, who would under the existing law be entitled to hold land at a fixed rate of rent, were compelled to execute kabuliats by the terms of which they were debarred from acquiring occupancy rights also in the land held by them.

During the present Rent Bill agitations, the zemindars in several districts in Eastern Bengal, especially in Backergunge and Mymensing, have been busily engaged in taking from the ryots kabuliats by which the latter bind themselves to occupy the land only for a limited number of years, although many of these ryots have already acquired the right of occupany. Under these circumstances, I think section 25, clause 1 of the revised Bill, by which settled ryots are declared entitled to acquire rights of occupancy over the whole estate,

should not be further modified or amended. The instances of very extensive zemindaries like those held by the Maharajah of Burdwan are very few, and no alteration is necessary on that account alone.

22. The next question raised in your letter under reply is whether the estate within which the right may accrue to the settled ryot be of the same extent as it was 30 years ago. I think a more recent date is preferable to one extending back to 30 years.

23. *Section* 31, *clause* (*a*).—The following words in section 31, clause (*a*), "but he shall not be entitled to cut down trees in contravention to any local custom," should be omitted, as it is calculated to afford frivolous pretexts to landlords to drag a ryot into court very frequently. In these days the only plan which the zemindars adopt to make a ryot yield to their demands (however unreasonable those demands may be) is by simply dragging him into court on various frivolous pretexts; and although the zemindar ultimately loses his case, yet the costs of litigation prove so ruinous to a ryot that he is sure to yield to his landlord's demand, however oppressive it may be. Trees are generally planted by the ryots themselves, and they very frequently cut down old trees for the purpose of fuel, &c.; but a landlord, when not on good terms with a ryot, constantly seeks opportunity for harassing him by litigation. The words "local custom" used in the clause (*a*) is very vague and undefined; and there is not a shadow of doubt that on every occasion that a ryot will cut down an old or useless tree the zemindar will drag him into court.

24. Under the ancient custom of the country, the khodkhasta ryots were entitled to cut down trees planted in their house either by themselves or by their ancestors. The present case made law, which tends to limit the ryot's right to cut down trees, is a comparatively recent innovation. With regard to this question, I think it is necessary that the privileges of ryots, which were accorded to them by ancient custom, should be now restored to them in a language more distinct than local custom, the existence of which can be hardly proved by the ryots after such repeated changes in the Rent law during the last 90 years

25. The most important provision in chapter V is contained in clause (*f*), section 31 of the Bill, which recognizes the transfer of occupancy right by sale or mortgage, &c. There is not the shadow of a doubt that the transferability of ryoti holding was recognized by the ancient custom of the country. Numerous authorities can be cited to prove the existence of such an immemorial custom. Even the most staunch advocate of the zemindari interest would not venture to deny the prevalence of this longstanding custom. But the question has been so repeatedly and so ably discussed in the Council, as well as by the Press, that there is scarcely any necessity for me to dwell upon it at any considerable length.

26. At the present stage of the Bill, the question is—How far it would be expedient to recognize the transferability of occupancy right? The Government of Bengal, in its letter No. 972, dated 27th September last, to the Government of India, has very justly observed that, "where the custom (of free sale of ryoti holdings) has grown up, and the tenants are in the habit of selling or mortgaging their rights in land, it should certainly be recognized by law, but where it has not, it may be questioned whether the law should move in advance of the feelings and wishes of the people." The question, then, which the Lieutenant-Governor has to answer is this:—"Has the custom of free sale of occupancy rights attained such a growth and stability throughout the province that it may be safely recognized by law?"

27. In answer to this question, no one who is acquainted with the landed system in Bengal will for a moment hesitate to affirm that the custom has already attained such growth and stability that legislation on the subject is imperatively called for.

28 Sir Richard Garth, in his minute on the former Rent Bill, expressed an apprehension of danger likely to arise from legislative recognition of the transfer of occupancy rights, on the ground that rival zemindars would very often purchase the occupancy rights of a ryot holding land under a neighbouring landlord; and this will undoubtedly open a wide door for constant dispute and dissensions between the different zemindars in the same locality. But if we carefully enquire into and examine the *jimbadari system* so extensively obtaining in Backergunge, and more or less prevailing in every part of Lower Bengal, it can be almost proved to demonstration that it was owing to the want of express legislative recognition of the transferability of ryoti holdings that there have been numerous disputes and dissensions amongst the several zemindars; and these disputes can only be prevented by express legislative recognition of the transferability of such holdings.

29. I have already observed that the custom of transferability of ryoti holdings had been in existence from a very remote period of antiquity. But after the Permanent Settlement the zemindar became very powerful, and would neither allow a ryot to transfer his holding nor recognize any such transfer if made without his permission unless a very large sum was paid to him by the purchaser in the way of *salami*. Owing to this state of things, a ryot could not purchase the holding of another, because his vendor's landlord would not allow him to take peaceful possession of it, nor would he be strong enough himself to establish his right to it against the arbitrary will of such landlord. Consequently, whenever a ryot was obliged to transfer his holding (mostly owing to the oppression of his landlord), he would go over to another powerful zemindar who would be strong enough to assert his rights against the will of his own landlord. In this way none but a powerful zemindar ventured to purchase the holding of a ryot of a rival zemindar. The ryot after selling his holding to any such powerful rival zemindar takes an under lease in respect of the land sold by him from his purchaser, and becomes to all intents and purposes an under-ryot of the latter. This sort of transfer of ryoti holdings to a powerful rival zemindar, which to a certain extent

bears a resemblance to the feudal system of Europe, is known by the name of the jimbadary system. The purchaser is called jimbadar, and the ryot selling his holding is said to have placed himself under the jimba (charge) of the purchaser. The history of the acquisition of extensive landed property in Backergunge by the late Baboo Ram Rattan Rai *alias* Rattan Baboo (zemindar of Narail in Jessore) will show how extensively this *jimbadary system* prevails in this district The Narail Baboos acquired a very large landed property in this district by purchasing at first the ryoti holdings of different tenants at a very nominal price. It is not because that the Narail Baboos were very lenient and kind-hearted zemindars that the ryots would place themselves under their protection; on the contrary, they were known to be very arbitrary and oppressive. But yet the ryots of other zemindars, when highly molested and oppressed by their own landlords, would satisfy their grudge against the latter by resorting to the Narail Baboos, who were strong enough to take possession of the land and to give some sort of protection to the ryot by means of force It was nothing short of an absolute necessity that would compel a ryot to sell his holding to a rival zemindar. A ryot would most gladly sell his holding to another of his own class, or, in case of debt or poverty, he would only sell a share of his holding instead of selling it in its entirety if he could be assured that he would be able to give peaceful possession of it to his purchaser. His right to transfer depends merely on custom, and the purchaser, in order to get possession of the holding so purchased by him, must be compelled to go to the court and establish the existence of such custom. But if there had been express legislative sanction for such transfer, no selfish landlord would be able to oppose such sale, and one ryot may very easily purchase the holding of another ryot.

30. Again, the people of this country are accustomed to attach the greatest value to property in land, consequently a ryot would never think of selling his holding if he is sure that his right to it is not to be violated by the arbitrary will of his landlord. In the jimbadari system it will be observed that ryots used to sell their land for nominal prices, simply because they thought that their rights were not secured to them, and could be destroyed at any moment by the arbitrary will of their landlords.

31. If the transferability of occupancy rights is recognized by legislative enactment, a ryot intending to sell his holding would never be required to go to a powerful rival zemindar. It is generally the oppression of the landlords that compels the tenant to sell his holding to a rival zemindar If these oppressions cease to exist, and if the transfer of ryoti holding is once recognized by legislative enactment, I doubt whether a ryot would ever think of selling his rights to another. The ryots are perfectly aware that by placing themselves under the jimba of another landlord in the way just described they gain nothing. On the contrary, they frequently experience greater hardship at the hands of their jimbadar, and afterwards have to repent the course they had once taken on the spur of the moment.

32. It has been also contended by the advocate of the zemindari interest that ryots are generally extravagant and improvident. They would borrow money by selling or mortgaging their occupancy rights, and in a short time they will be reduced to the miserable condition of hired cultivators, while the mahajan or money-lender will be the owners of these occupancy holdings. I have already stated that mahajans in several districts are a class of men who would never purchase these occupancy holdings. As regards the extravagance of ryots, I think in Eastern Bengal they are less extravagant than they are generally supposed to be by the opponents of the Bill. On the contrary, the ryots are much more frugal than scions of rich families, who are generally heavily involved in debt either in conducting unnecessary litigation, or owing to their improvidence in spending large sums in shrad or marriage. If 25 ryots are highly extravagant in the hundred, there would be found no less than 75 per cent. zemindars much more thoughtless and extravagant than these ryots. And why should not these 75 zemindars in the hundred be deprived of their zemindari, because they know not how properly to manage or protect the same from the hands of their creditors? The apprehension from mahajans or money-lenders have been a hundred times exaggerated by the clamours raised by the advocates of the zemindari interest against the proposed Bill.

Enhancement of Rent.

33. The first ground for enhancement of rent, as given in clause (*a*), section 43 of the revised Bill, has been a constant source of abuse during the last 25 years; and there can, I think, be no doubt that these abuses have already reached the magnitude which, if carefully examined, would induce the Legislature to expunge this ground of enhancement from the future Rent law of Bengal. Everywhere in Lower Bengal the zemindar tries to create a new prevailing rate after each successive interval of two or three years. In April last I tried twelve analogous suits for enhancement of rent, and an extract from my judgment in those cases, which is given in the annexure (A), will show how unscrupulously some of the landlords of Eastern Bengal plan and devise means for creating a new prevailing rate after each successive interval of two or three years. I should also mention here that immediately after the great agrarian disburbances had taken place in Pubna. I was temporarily deputed to Shahazadpore (a chauki in Pubna), whence first originated the germ of those agrarian disturbances On careful enquiry I came to know that one of the principal causes of those riots was the attempt of zemindars to create a new prevailing rate in the locality, by taking fresh kabuliats at an enhanced rate from a portion of the tenantry, with a view to put them in evidence in the enhancement suits contemplated to be instituted against the more refractory tenants who refused to execute kabuliats at such rates.

34. "There is a general complaint," says an advocate of zemindari interest, "from Eastern Bengal, that the landlords cannot realize the rents from ryots without much difficulty." But it appears to me that if there is any difficulty experienced by the zemindars of Eastern Bengal in realizing rent, that difficulty is of their own making—a difficulty which they have themselves created in consequence of their attempts to create a new prevailing rate at the expiration of every two or three years. As the Behar zemindars try to defeat the growth of occupancy rights by shifting a ryot from one field to another, the zemindars of Lower Bengal are no less busy in creating collusive and fictitious rates after each successive interval of two years. It is simply to resist such systematic attempt at enhancement of rents on the part of the landlord that the ryots of Lower Bengal frequently combine or form into a strike or jote. The inevitable consequence of this state of things is that payment of rent is stopped because the ryot can no longer trust his landlord, and therefore ceases to pay rent excepting in court. No legislative measure, however well devised, is calculated to stop these chronic misunderstandings and differences between landlords and tenants, unless this ground for enhancement of rent [contained in clause (*a*) of section 43] be omitted.

35. Suits for enhancement of rent on the ground of prevailing rates, though generally dismissed by the civil courts, are still brought by landlords simply for the purpose of harassing a ryot by litigation till the latter is at last compelled to yield to the terms proposed by the former. A zemindar sues for enhancement of rent on this ground, and if his suit is dismissed by a Munsif, he prefers an appeal and afterwards a special appeal, and thus the litigation is protracted for a period of not less than five years. But is there a ryot in Bengal who can afford to pay the expenses of such protracted litigation unless the whole village is combined to resist the landlord? And even when there is a combination or jote, the ryots can hardly afford to pay the enormous cost of a protracted litigation. The result is that a ryot, after being impoverished or utterly ruined in paying the costs in one court, at last places himself at the mercy of the landlord and executes kabuliats, at any rate, however exorbitant, demanded by the latter. Now whether a landlord loses his case in the civil court matters very little to him, provided he has the means to carry on the litigation up to the highest court of appeal. The utter want of uniformity in the rates of rent, even amongst the tenants of the same village, is the inevitable consequence of the landlord's constant attempt to extort as much as possible from each individual ryot. In annexure (A) it will be found that even the same ryot pays at different rates to different sharers of the same taluk within which his holding is included. The zemindari oppression of the last 90 years has entirely effaced all traces of uniformity in rates of rent in every single village or mehal. Rack-renting has been introduced everywhere since the Permanent Settlement, although the expression rack-renting or computation rent had never been known in the land law of Bengal before the case of Hill *vs.* Issur Ghose was decided by Sir Barnes Peacock, C.J. But the principle laid down in that case was also shortly afterwards overruled by the Full Bench decision of the High Court in the case of Thakooranee Dassi. Unless this tendency towards the introduction of the rack-renting system by means of coercion and force is curbed or stopped by legislative measures, the condition of the peasantry will gradually become worse day by day. The khodkhasta ryots were the real proprietors of the soil before the Permanent Settlement, and it is now absolutely necessary that they should be restored to the rights and privileges which they had previously enjoyed under the customary law of the country.

36. As regards enhancement out of court, there is no doubt that landlords very often use coercion and threats to make the ryots execute kabuliats at an enhanced rate of rent. But in order to prevent these abuses, it would be expedient to provide, in addition to clause 2, section 41 of the Bill, that in a suit for arrears of rent the court will not give effect to enhancement out of court, unless it is proved that the ryot had been willingly paying rent at that rate during the preceding two years before the institution of the suit.

37. A definite limit to enhancement, on the ground of improvement made by the landlord, should also be prescribed. In the absence of such definite limit, the court will be led to suppose that the entire increase should be given to landlords, although it would be extremely difficult to ascertain what portion of increase was owing to such improvement, and what was owing to a variety of other causes which were simultaneously at work.

38. The difficulty pointed out by you in paragraph 11 of your letter to the Divisional Commissioners, with regard to the provision contained in section 42, clause 1, cannot be remedied, unless the equality between the occupancy and non-occupancy rates is established; and I shall have to say a few words with regard to it while giving my opinion on the provisions contained in chapter VI of the Bill.

Bastu land.

39. The Select Committee, in paragraph 4 of their report, observe that—"It will be seen that tenants of homestead or bastu land, which is not part of an occupancy holding, have no place in revised Bill. It may be that on further consideration it will be found desirable to introduce into the Bill some provision relating to tenants of this class." The absolute necessity for making some equitable provisions relating to this class of tenants, instead of leaving their tenures to be regulated by local custom as provided by section 216 of the revised Bill, will be easily perceived when we closely look into the present state of the law on the subject

40. After Act X of 1859 had come into operation, the Calcutta High Court has made a distinction between the land held for agricultural purposes and the land held for the

purposes of dwelling, between the land situated in the mofussil and the land situated in the centre of a town. By putting a limit to the meaning of the word land, as used in Act X of 1859, the High Court has excluded the bastu (homestead) land and the land situated in the centre of a town from the operation of section 6 of Act X of 1859. A ryot (of however longstanding he may be) who holds bastu land only can no longer acquire any right of occupancy in respect of the land held by him; and under the present state of the law, this class of tenants are entirely placed at the mercy of their landlords, who can turn them out from their holdings at any moment.

41. It may be said that the provisions of Act X of 1859, and those of Act VIII of 1869, with respect to the establishment of the right of occupancy, are cumulative, and not exhaustive or exclusive of all other modes of establishing that right. But the way in which Act X of 1859 was being administered by the revenue courts, and at present, looking into the working of Act VIII of 1869, it can be affirmed without any fear of contradiction that, though theoretically these enactments are believed to be mere cumulative laws, yet for all practical purposes they are looked upon as the sole guides for determination of all questions arising between landlord and tenant. On the one hand it is extremely difficult for a ryot to prove the existence of any special custom by which his tenure is protected On the other hand, in these days of frequent legislation, both the superior as well as the lower courts are accustomed to lean too much upon the written law. The construction put upon the word land by the Calcutta High Court has made a large number of longstanding ryots holding bastu land alone mere tenants-at-will. The reason which induced the High Court to hold that section 6 of Act X of 1859 is not applicable to bastu land have been given in their judgment in the cases reported in 8 W. R., page 250; 9 B. L. R., pages 97, 102, 121; 20 W. R, page 341, and so on. Sir Richard Couch in one of these cases observed "that, in determining what is the meaning of '*land*' and '*holding land*' in Act X of 1859, we must look at all the provisions of the Act * * * * Section 112 of Act X of 1859, and the following sections, can only apply to land used for cultivation The intention of the Legislature is to be deduced from the whole Act, and a construction which makes the whole Act consistent is to be preferred."

42. But if the framers of Act X of 1859 did really intend to exclude bastu land from the operation of sections 6 and 17 of the Act, it must have been done under the impression that the ryots holding bastu land are, according to the customary law of the country, entitled to higher rights and privileges than what have been conferred by the provision contained in section 6 of that Act; but unfortunately the case made law has left these classes of ryots quite unprotected, and their condition has been made worse than that of the occupancy ryots.

43. It is quite evident that ryots holding agricultural land generally incur less expense for its improvement than the ryots holding bastu land. The tenants of bastu land are under the absolute necessity of improving its condition for their own convenience. They plant trees: they raise the land above flood-level: they clear the jungle: and every day of their lives they do something which improves the condition of the land. It was on this consideration that both during the Hindu as well as Mahomedan Government the resident ryots enjoyed greater rights and more privileges in respect of their holdings than the non-resident ryots, who used to cultivate agricultural land only. If the meaning of the word resident ryots be carefully analysed and examined into, it will undoubtedly appear that, under the ancient customary law, this class of tenants holding bastu land were looked upon as a sort of peasant proprietors, the fact of their being resident ryots not only entitled them to superior privileges in respect of their homestead land alone, but it directly or indirectly used to create in favour of them better claims to the agricultural land in the vicinity than what was to be acquired by the non-resident ryots. Even where a ryot used to hold bastu and agricultural land on the very same tenure, the ancient custom would permit his eviction from agricultural land under some exceptional circumstances; but his right to the bastu land was always respected with religious scrupulousness. The celebrated French traveller Buchanan, from whose account of the country Mr. James Mill collected materials for his history of India, observed that in Southern India, even during the arbitrary and despotic reign of Tippu Sultan, the eviction of a ryot from his homestead land would have been looked upon as an act of special grievance. In Rajputana, as it will appear from Todd's Rajasthan, the ryots used to call their homestead land *baputa*, the most emphatic and the most significant expression for patrimonial inheritance Sir John Malcolm, in his history of Central India, observes that the settled ryots of Central India have many privileges and enjoy much consideration. In Bengal the conversion of ryoti holdings into tenures, the practice of sub-letting a portion of a ryoti holding by a resident ryot, will undoubtedly show that resident ryots were considered as peasant proprietors

44. The fact that the framers of Act X of 1859 attached very great weight to the expression "resident ryots," strongly indicates that the act of erecting a permanent habitation on any particular land by a ryot was under the ancient custom considered a sufficient criterion for creating some sort of right in his favour in such land, however differently limited that right may be, under the different circumstances of the case. This custom of recognizing the rights of this class of ryots was the necessary outcome of a very equitable principle of the economic laws which regulate the complicated affairs of mankind living in a state of society Whenever a ryot was to erect a dwelling-house on a particular plot of land, with an intention to make it his permanent residence he would be necessitated to spend his money and labour upon it; and consequently there is an implied contract between him and his landlord to the effect that he

should not be summarily ejected by the latter. The continuous engagement of this sort of protection for several centuries created in the minds of the people a deep-rooted feeling of respect for this custom; and it was therefore that even during the despotic reign of Tippu Sultan, or during the worst days of Serajuddowlah that no one ever thought of violating this custom.

45. Now, having stated what was the ancient custom of the country, and how it originated, I take the liberty to suggest that protection should be given to this class of tenants holding bastu land only, by introducing some provision into the Bill to the following effect, viz., first, a bastu ryot shall acquire occupancy right in the land held by him after a continuous occupation of three years only; secondly, that if any such ryot is ejected before the expiration of three years, he shall be entitled to compensation from his landlord ejecting him; thirdly, that the rent of bastu land shall not be enhanced on the ground given in section 43 of the Bill, but the rent may be enhanced under the rules applicable to enhancement of rent of tenures; fourthly, that ryots holding both bastu and agricultural land, if liable to be ejected from their holdings for non-payment of rent, shall be allowed to retain their possession of bastu land on payment of a fair and equitable rent.

46. In reply to the question raised in paragraph 2 of your letter No. 9T—R, dated 5th June, *i.e.*, whether within my jurisdiction any practice prevails of exempting the bastu land from sale when the occupancy right in the arable portion of the holding is put up for sale in execution of a decree, I beg to observe that I am not aware that any such custom obtains in any part of this district. Besides, under the existing Sale law such exemption of an indefinite portion of an entire tenure would be quite illegal. Consequently, if such custom had ever prevailed, it must have been abolished by the express law and the High Court rulings on the subject.

47. In paragraph 3 of your letter, you have asked whether there is any local custom which recognizes any right in a ryot to his holding, although he has not held it for 12 years. With reference to this question, I beg to observe that Act X of 1859, by prescribing that continuous occupation for 12 years would create a right of occupancy in a ryot, has to a very great extent abrogated all sorts of local and special custom on the subject which had been previously obtaining in different parts of the country. It is generally in suits for ejectment of a ryot from his holding that such local or special customs are likely to be pleaded. But under Act X of 1859, or under Act VIII of 1869, the landlord very scarcely brings separate suits for ejectment. In cases for the recovery of arrears of rent, the landlord generally asks for ejectment also under section 52 of Act VIII of 1869, and the provision contained in section 52 of Act VIII of 1869 has abrogated many local customs, inasmuch as it virtually declares that all classes of ryots are liable to be ejected for non-payment of rent.

48. But notwithstanding such abrogation of a variety of local customs by the introduction of Act X of 1859, a secret yearning for them is often manifested in the general conduct of the people; and the ejectment of a resident ryot of three years' standing is looked upon as an act of special injustice and grievance. It must therefore be assumed that even three years' occupation creates something like an occupancy right in a settled ryot in respect of bastu land. It would be therefore quite fair and equitable that, in accordance with the spirit of the ancient custom, the ryots should be allowed to acquire right of occupancy after continuous occupation for three years only.

CHAPTER VI.

Non-occupancy Ryot.

49. Chapter VI, which applies exclusively to non-occupancy ryots, is undoubtedly calculated to frustrate the very object for the accomplishment of which the revision of the Rent law has been undertaken. In India the rate of rent was always being regulated and controlled by custom. I have more than once observed that computation rent or rack-renting was never known in this country. Even Lord Cornwallis, the author of the Permanent Settlement, in his minute dated 3rd February 1790, observed—"Whoever cultivates the land, the zemindars can receive no more than the established rent. To permit him to dispossess one cultivator for the sole purpose of giving land to another, would be vesting him with a power to commit a wanton act of oppression from which he would derive no benefit." The author of the Permanent Settlement was fully aware that the established or customary rates apply to all classes of ryots alike, and consequently he observed that the landlord, by dispossessing one cultivator for the sole purpose of giving land to another, would derive no benefit whatsoever. But since the days of the Permanent Settlement the zemindars have been daily dispossessing even longstanding hereditary resident cultivators, whenever an offer for a higher rate of rent is received from a neighbouring cultivator. This sort of ejectment very often takes place without any intervention of court. The zemindars as a class are sufficiently strong to turn out a ryot from his holding by sheer force, or show of force. The proper remedy for the prevention of these chronic evil practices lies in establishing an equality in the rates of rent payable by occupancy as well as non-occupancy ryots. Act X of 1859 also never aimed at making any distinction between the rates of rent payable by these two classes of ryots. The Rent Bill has been introduced with the avowed object of affording protection to the ryots by placing a check on the system of rack-renting attempted to be introduced by the zemindar, whose sole maxim in dealing with ryots is "might is right." But the provision of chapter VI

is not calculated in the least to prevent rack-renting if inequality between occupancy and non-occupancy rates be allowed to exist. Why is it that the zemindar of Behar tries to defeat the growth of occupancy rights? and why is it that in Eastern Bengal ryots frequently combine or form into jotes? The reason is quite clear. The zemindar wants to introduce a system of rack-renting which is likely to exert a very evil influence on the agrarian prosperity of the country.

50. The occupancy ryot should, no doubt, enjoy greater rights and privileges than the non-occupancy ryot. But as regards rates of rent, both these classes of ryots should enjoy the same privileges. Unless the equality in the rates of rent payable by these two classes of ryots be enforced, the attempts for the preparation of a table of rates as contemplated by the Bill is very likely to prove unsuccessful. If an occupancy ryot pays rent at the rate of Rs. 5 per bigha, and a non-occupancy ryot, who has been holding land for eleven years, pays at the rate of Rs. 10, then the latter, on acquiring on occupancy right at the expiration of a year, shall have to pay at the same rate, and the result will be that in the same locality one occupancy ryot will pay at the rate of Rs. 5 and the other at the rate of Rs. 10. I have already observed that in the same village, for land of a similar description, great diversity in the rates exists amongst the same class of ryots; and if it be the object of the present Bill to established an uniform rate of rent in each locality, it can never be accomplished if the zemindar be allowed to demand from a non-occupancy ryot a higher rate of rent than what is paid by the occupancy ryot. In my humble opinion section 56 of the revised Bill should be amended by adding a clause to the effect that non-occupancy ryot shall not be liable to pay at a higher rate than the rate at which the occupancy ryot pays for similar land in the vicinity. Again, clause 9, section 60, should also be amended in this way:—"In determining what rent is fair and equitable, the court shall have regard to the rate of rent payable by occupancy ryots for land of a similar description, and with like advantages in the vicinity.

51. Rai K. D. Pal Bahadur, in his memorandum of dissents, observes:—"The non-occupancy ryot will thus be one in name; the landlord's present right to deal with him at his discretion is entirely taken way, while the freedom of contract is disallowed, and the landlord is compelled to give a judicial lease for five years. I should observe that in consequence of the introduction of judicial lease, the original provisions regarding compensation for disturbance have been omitted. These provisions embodied a new-fangled idea not known in this country." But is there any evidence to show that by the ancient custom of the country the zemindar, before the Permanent Settlement, had been at liberty to enhance the rent of any class of ryots at his discretion? And can it for a moment be contended that the Permanent Settlement has given any such right to the zemindar, when we find that the author of the Permanent Settlement very distinctly said—"That whoever cultivates the land, the zemindar can receive no more than the established rent." If by enforcement of the principle of customary or established rent, the ancient right of the ryots are restored to them, the right of which they are deprived simply by the arbitrary will and oppressive conduct of the zemindars, it will undoubtedly contribute to promote the progress and prosperity of the agrarian community, as has been done in Prussia at the commencement of the present century by the reforms carried out by Stien and Hardenberg. "There," observes Mr. Henry Fawcett, "a feudal tenantry was transformed into cultivating proprietors, who have probably more than any other class contributed to the social and material advancement of Prussia."

CHAPTER VII.

Under-ryots.

52. The limitation of rent, when paid in money by the under-ryots as provided by section 62 of the Bill, is quite fair and equitable. There can be no doubt that the provisions contained in sections 62 and 63 of the revised Bill is calculated to discourage sub-letting, which is intended to be effected by the provision of section 38 of the Bill. In this chapter further provision should be made to the effect that in case of division of produce between the ryots and the under-ryots, the former shall not get more than half the quantity of the produce. In some places the sub-letting ryots take more than half, and the actual cultivator gets almost nothing for his labour.

53. I have already observed that section 38 of the Bill is not only unnecessary, but is not calculated to work well.

CHAPTER XIII.

Distraint.

54. Distraint, even when exercised through the court, is attended with a variety of evils. The Rent Commission, therefore, in concurrence with the Behar Rent Committee, did very wisely propose the abolition of the existing law of distraint. Its provision is very generally availed of by the landlords for the purpose of harassing the ryots. On looking clearly into its practical effects, it may be said to be the relic of that most tyrannical law (Regulation VII of 1799) passed during the administration of Lord Wellesley, which is known to the people by the name of "*haftam*," and the very recollection of which fills the mind with the horrors of the old oppression and cruelties practised by the zemindars of almost every part of Bengal upon the ryots.

55. During the last 11 years that I have been in the service, I have found that out of every 100 applications for assistance in making distraint under section 75 of Act VIII of 1869, 95 have generally been intended solely for the purpose of bringing the ryots to submission, and of making them yield to the unreasonable demand of the zemindars. For the purpose of enhancement of rent out of court, as well as for compelling a ryot to execute kabuliats prejudged to his own interest, the law of distraint affords very great help to the landlords.

56. Rai K. D. Pal Bahadur, in his memorandum of dissents, observes:—"The law of distraint is generally regarded as an important and potential auxiliary in realizing rent." But I am sorry to be compelled to observe that it is not an auxiliary in realizing rent, but it is an auxiliary for harassing the ryots. It cannot be denied that very rarely landlords in Lower Bengal avail themselves of the law of distraint for the purpose of realizing rent. The cases or proceedings which generally arise out of applications for distraint are not finally disposed of within six weeks by the civil court. Sometimes it takes longer than three months to decide the dispute between a distrainer and the ryot whose crop is distrained; whereas under the present arrangement a suit for recovery of arrears of rent is decided within 30 days, and in execution of these decrees the crops may be easily attached. If the landlord really intends to realize rent by distraining the crops, then it is not at all probable that they would almost in every case willingly allow the distrained crops to be damaged or spoiled. There is not a single case in which I have not found that the distrained crops are either damaged or sold at a nominal price, or misappropriated to a great extent by the men employed by the landlords. Even if there is any *bonâ fide* application for distraint with a view to realize rent, only in such cases also the crop is always damaged or sold at a nominal price. The civil court peons, who are generally deputed to support the distrainer in making distraint, do not take the least care for the preservation of the crops. On the contrary, instances have been repeatedly brought to my notice in which it was found that under colour of attachment of crops the landlord in collusion with the civil court peon clandestinely removed the crops to his own house, and the peon reported that before he reached the mofussil, the crops had been taken away by the ryots. Instances are not also wanting in which, in case of distraint, the distrainers have misappropriated the greatest portion of the produce, and put to sale only a small part of it, which can hardly satisfy the claims for arrears. Then, again, under section 77 of Act VIII of 1869, when a ryot, as soon as his crops are distrained, tenders payment of arrears, the landlord's gomasta refuses to accept it on a variety of frivolous excuses, until the ryot agrees to pay a few rupees to the gomasta and a few rupees more to the civil court peon, and so on. If I make any attempt to state in detail the numerous instances of oppression which arose out of applications for distraint which came to my knowledge in the course of business during the last 11 years, I would be undoubtedly required to write a volume on the subject; but it is needless to cite these individual instances of hardship and oppression. It would be quite sufficient to say that the provisions of the law of distraint are never availed of by the landlord for the purpose of realizing rent. Two of the biggest zemindars in this district—Baboo Kali Krishna Tagore and Rajah Satyanando Ghosal—who are known to be very good landlords, have scarcely any occasion to avail themselves of the law of distraint. But it is the oppressive zemindars alone who avail themselves of the law simply for the purpose of harassing a ryot by damaging or misappropriating his crops. Even if any *bonâ fide* application for distraint is made simply for the purpose of realizing rent, the applicant is sure to find that he is not benefited in the least by it, because the way in which the crops are gathered and sold is not calculated in the least to secure one-fourth of its real price. I know an instance in which the value of the produce of a plot of land, of which the yearly rent was nearly Rs. 200, and the real value of the produce of which was Rs 400, was sold for less than Rs. 20. This is the practical result of the law of distraint which, in my humble opinion, ought to be abolished.

The Government of India, in their letter No. 784, dated 5th May 1884, observes:—"That as regards the former proposal to abolish distraint in the case of occupancy tenants, the Government of India is inclined to doubt the universal correctness of the argument that in the saleability of the occupancy ryot the landlord has perfect security for his rent." The Government, it seems, have therefore arrived at the conclusion that the provision relating to distraint should be retained in the Bill after necessary amendments. In your letter under reply, you have also observed that "the question lies between the retention of distraint as it exists under the present law, and distraint exercised through the courts in the way prescribed by the Bill." But as I have already pointed out that the provision regarding distraint is generally availed of by the zemindar simply for the purpose of harassing a ryot, the entire abolition of the law of distraint will therefore only prevent the zemindari oppression without creating any real difficulty in realization of rent.

It appears that both the Government of India as well as the Government of Bengal have been led to suppose that the law of distraint is likely to work satisfactorily if the provisions contained in sections 68 and 70 of the present Rent Law, Act VIII of 1869 (which authorizes the landlords to distrain the standing crops without any intervention of the court), be repealed. But greater oppression is committed, and greater abuse of the right of distraint always takes place, when the power of distraint is exercised through the courts. In Lower Bengal the landlord generally tries to avoid the risk of a criminal prosecution, and consequently, in almost all cases of distraint, under a feigned apprehension of resistance, they first apply for assistance to the civil court under section 75 of Act VIII

of 1869. This is done simply for the purpose of escaping criminal prosecutions with greater facility.

In order to illustrate how the greatest oppression is being committed by exercising distraint through the court, I would cite several instances which came to my knowledge in the course of business. In Jessore and in Backergunge I have seen that a zemindar generally, with a view to eject a refractory tenant, induces another ryot to execute kabuliat to him in respect of the land held and cultivated by such refractory tenant; and afterwards, when the season for reaping the crops arrives, he asks for process of distraint against the man who executed the kabuliat, but who in fact did not raise the crops. In the case of such distraints, the real tenant of the land institutes a suit against the distrainer under section 96 of Act VIII of 1869; but this sort of cases can hardly be adjudicated within a month; consequently, if the claimant fails to furnish proper security, the crop is put to sale at a very nominal price.

This is one of the several methods followed by the zemindars for getting rid of a refractory tenant; but there are thousands of other ways in which the law of distraint is set in motion for the purpose of injuring the ryots.

CHAPTER XVII.

Contracts and Customs.

The Government of India, in one of their earliest correspondence on the subject of the proposed revision of the Rent law, has very justly observed that "such is the power of the zemindars, so numerous and effective are the means possessed by most of them for inducing the ryots to accept agreements which, if history, custom, and expediency be regarded, are wrongful and contrary to good policy, that to uphold contracts in contravention of the main purpose of the Bill would be in our belief to condemn it to defeat and failure. It is absolutely necessary that such contracts should be disallowed."

The principal objects, for the accomplishment of which the revision of the Rent law has been undertaken, will undoubtedly be frustrated if its provisions be allowed to be overriden by contract. In my humble opinion, therefore, freedom of contract in cases specified in section 210 of the revised Bill should not be allowed.

Rai K. D. Pal Bahadur, in his memorandum of dissents, observes "that, if the ryot can be fairly considered a free agent in mortgaging or selling his hearth and home, or his agricultural land, &c., * * * why should he be considered incompetent to enter into contracts with his landlord." But the provision contained in section 210 of the revised Bill is based on a most equitable principle of the Law of Contract. It simply takes away the binding force of certain classes of agreement which, if permitted to be enforced, would defeat the provision of the proposed Rent law. Rai K. D. Pal Bahadur calls it a "*retrograde move*." But no one can fail to perceive that it is carrying on the most equitable principles of the Law of Contract to its proper limit. In the absence of an express provision on the subject, the subordinate courts are liable to overlook the principle that agreement calculated to defeat the provision of any law is void.

In addition to the cases specified in section 210 of the revised Bill, there is another case also in which the prohibition should be extended. A very large number of kabuliats are being filed in my court every year, from which I find that interest on arrears of rent at the rate of 75 per cent. per annum are stipulated to be paid by these kabuliats. There are several other kabuliats from which it appears that ryots agreed to pay interest upon the arrears at the rate of (150) per cent. per annum. Now when a ryot is sued for arrears of rent upon any such kabuliat, at the end of the third year the landlord claims Rs. 450 as the interest on the arrears of Rs. 100 only. It is therefore necessary that another clause should be added to section 210 of the revised Bill, providing that landlord is not entitled to charge interest on arrears of rent at a higher rate than twelve per cent. per annum, notwithstanding any contract to the contrary.

Section 214 of the revised Bill is not only unnecessary, but it will induce some of the unscrupulous landlords to change the conditions of their tenantry to those of *utbandi* tenants. In the original Bill, it was provided that, except the *khamar* land, all classes of ryoti land would be subject to the acquisition of occupancy right by ryots. There is scarcely any necessity for exempting *utbandi* and *hal hasila* land from the operation of the provision regarding occupancy right. In every district where the *utbandi* system prevails, the productive power of the land is gradually decreasing. The reason for such deterioration of land can be better expressed in the words of the well known Arthur Young, who said—"Give a man the secure possession of a bleak rock and he will turn it into a garden; give him nine years' lease of a garden, and he will convert it into a desert."

In paragraph 33 of your letter to the Divisional Commissioners, you have observed "that the information before the Government as to the precise nature of *utbandi* and *hal hasila* system is not as full or precise as could be wished." But I beg to observe that there is not much system in them. The landlords, under an erroneous impression that they would derive greater profits from their land by sub-letting it to new tenants at the end of every year, have introduced this practice in some districts of Bengal.

In paragraph 1 of your letter No. 9, dated 5th ultimo, you have directed me to examine the procedure section of the Bill (chapter XIV) with special care; but I am sorry to be

compelled to observe that, owing to the pressure of work which is usually heavy during this season of the year, I find myself quite incapable of submitting any report on this subject before 30th instant. I have only dwelt upon the main points of the Bill and tried to avoid any discussion on matters of detail, in consequence of my want of time to go through the Bill carefully. I will most gladly submit my opinion on the procedure sections of the Bill if you please to extend the time for submission of my report till 31st August next.

ANNEXURE A.

Extract from the Judgment of the First Munsif of Barisal in the Enhancement Suits Nos. 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2622, *and* 2623 *of* 1883.

JUDGMENT—PARAGRAPH 5.

(5.) Before entering into the consideration of the merits of the questions involved in each of these issues *seriatim*, I think, in order to arrive at a right understanding as to the nature of these cases, it is necessary that I should, at the very threshold of this judgment, briefly state the facts and circumstances under which these suits for enhancement of rent were brought by plaintiffs. Because a brief enunciation of these facts, showing the real state of things, will enable us to form a right judgment upon the merits of each question, as well as to appreciate the value of the evidences of sixty witnesses examined by plaintiffs in these cases. It should be also stated here that this judgment is entirely based upon the sole testimonies of plaintiff's witnesses, as the defendants were not called upon to adduce any evidence for the purpose of rebutting those of plaintiffs.

It appears on the sole testimonies of plaintiff's witnesses that the taluq within which the defendants in each of these cases hold land is the joint property of a very large number of shareholders, whose number would likely to exceed even (25) twenty-five. Till the year 1280 B.S. the defendants, as well as the other ryots of the same class, who have been holding land within the taluq, used to pay rent at an uniform rate of Rs. 7-8 per each kanee of all sorts of land After the year 1280 B.S. the plaintiffs, Golam Ali and some of his co-sharers, proposed to enhance the rate of rent hitherto paid by ryots. But the ryots in a body began to resist their attempts. With the exception of one or two ryots out of 107 tenants of the mehal, the plaintiff failed to induce anybody to agree to pay rent at an enhanced rate. Thus baffled in their attempts, and disappointed in their ardent expectation to raise the rate of rent, the plaintiff Golami and all his co-sharers of the estate in the year 1282 B.S. made a most resolute and vigorous attempt to enhance the rate of rent by show of force, or by means of the actual use of force. For the speedy accomplishment of this object, all the proprietors of the mehal jointly employed one Obhoy Charan Mookerjee as their common naib. Before 1282 B.S. each group of shareholders had a separate naib and a tehsildar. It appears to me most probable that Obhoy Charan Mookerjee was supposed to be a most *jabardasta* man, and consequently he was selected as the only person who was capable of bringing these tenants into submission by the actual use of force. The result of these arrangements was that before the end of 1283 B.S. there was a serious apprehension of a breach of peace in the locality, and both the tenants and the landholders were called upon by the Magistrate of the district to show cause why each party should not bind themselves by penal recognizance to keep peace. One of the sharers of the taluq, who occupies a prominent position in these cases (I mean Mea Golam Ali), and who, as observed by his own Pleader, Moulvi Mohamad Wazed, has, rightly or wrongly, obtained an unenviable and unfortunate notoriety of being a very *oppressive landlord*, was also summoned by the Magistrate to execute a penal recognizance for keeping peace. Golam Ali, therefore, previous to his appearance before the Magistrate, caused notice of enhancement to be served upon these tenants, and for a while gave up the idea of using any force for the purpose of enhancing the rent of the mehal. Thus this time, also, the landlord's attempt to enhance the rent proved unsuccessful. At the same time, Obhoy Charan Mookerjee, the *captain* selected for overawing the ryots by use of force, was discharged, and each group of shareholders re-appointed their respective naib and gomasta as before.

After this event, except Golam Ali, the most of the other shareholders of the mehal were soon reconciled with the tenants, who also agreed to pay a little increase in rent. This reconciliation was followed by execution of fresh kabuliyats by several tenants, including the defendants themselves, to the large number of shareholders, whose aggregate share would exceed $\frac{11}{16}$ths of the taluq. By these kabuliyats, which were executed in 1283 B.S., some of the tenants agree to pay rent at the rate of Rs. 8 per kanee in respect of all sorts of land, and others at the rate of Rs. 8-8 per kanee. It is to be observed here that some deception must have been practiced upon these poor ryots, even in taking from them these kabuliyats, inasmuch as by execution of these documents these ryots, who are admittedly longstanding resident hereditary ryots, appear to have sacrificed some of their rights. But it must be also borne in mind that these ryots had been harassed during the preceding two years, and consequently it is no wonder that they would try to purchase peace even at the sacrifice of some of their rights. But Golam Ali alone did not agree to accept kabuliyat at the rate of Rs. 8 or Rs. 8-8 per kanee, as it was agreed between the defendants and other sharers of the taluq. including the plaintiffs in the cases Nos. 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2622 of 1883. Golam Ali demanded Rs. 10 per kanee, which the tenants could by no means

afford to pay, as they used to receive at that rate from their sub-lessees. But it appears that during the years 1284 and 1285 Golam Ali did not take any further step to enhance the rent for fear of being again summoned to execute penal recognizance by the Magistrate. In the year 1282 B.S., while Golam Ali and some of his co-sharers first attempted to raise the rate of rent, they succeeded to induce a few of these ryots to execute kabuliyats agreeing to pay rent at the rate of Rs. 10 per kanee. But most of these ryots were the servants of the landlords, and there can, I think, be no doubt that these men executed the kabuliyats simply for the purpose of creating an evidentiary fact which would tend to show that Rs 10 per kanee was the prevailing rate in the mehal. I think during the years 1284 and 1285 Golam Ali was trying to induce other ryots to execute similar kabuliyats with a view that such kabuliyats would eventually enable him to prove the prevailing rate of the mehal. But more than three-fourths of the tenantry were quite inexorable. Nothing could induce them to execute kabuliyats agreeing to pay rent at Rs. 10 per kanee for all sorts of land. In 1286 Golam Ali perhaps lost his patience and began to try once more to bring the ryots into submission by the actual use of force. For this purpose he employed *latteals* or clubmen to molest the ryots; and on one occasion he (Golam Ali) sent several men for bringing forcibly to his tehsil cutcherry one Beshye Chowkidar. At this time three-fourths of the tenantry combined or formed into a strike to resist Golam Ali's attempt to enhance their rent. As soon as Golam Ali's man arrested Beshye Chowkidar, one of the ringleaders of the jote, the tenants from all sides and from different directions began to assemble and rescued Beshye Chowkidar from the hands of Golam Ali's men. On this occasion a very serious riot took place, and Golam Ali's men were seriously wounded This riot case was brought to the notice of the Magistrate, and some of the ringleaders of the ryots' party, who wounded Golam Ali's men, were sent to jail. This circumstance placed Golam Ali in a most advantageous position for the purpose of harassing the other ryots. The ryots were frightened by the result of this riot case, and through fear of being sent to jail, like those who had been already convicted in that riot case, a large number of tenants deserted their ringleaders, and began to execute kabuliyats to Golam Ali and to several other sharers, except to Jagadamba, agreeing to pay rent at the rate of Rs. 10 per kanee. In the year 1287, immediately after the result of that riot case, Golam Ali and one or two of his other co-sharers succeeded in obtaining 62 kabuliyats from several tenants of the mehal. Then during the years 1288 and 1289 B.S. 48 more kabuliyats were obtained from different ryots, who also agreed to pay rent at the rate of Rs. 10 per kanee. And thus out of 107 tenants of mehal, 84 or 83 tenants offered submission to the landlord and executed kabuliyats to Golam Ali, as well as to some of his co-sharers; whereas the remaining 23 or 24 tenants did not submit to the terms offered to them. The plaintiffs have now put in evidence these kabuliyats executed in 1287, 1288, and 1289 B.S. to prove that the prevailing rate of the mehal is Rs. 10 per each kanee of all sorts of land. The point, therefore, which I shall have to determine, as regards the prevailing rate, is whether the enhanced rate of rent, recently readjusted in the way just stated, can be called the prevailing rate of the mehal. This being the fact of the case, as found upon the evidence adduced by plaintiffs, I shall now proceed to consider each issues *seriatim*.

First issue.—As regards the first issue, *i. e.*, whether notice of enhancement was framed just in accordance with the requirements of the law, I find that there are no other irregularities in the notice except that, *first*, it is issued on the application of some of the sharers, and not on the application of all the proprietors of the mehal; *secondly*, that in this notice of enhancement an imaginary rate of rent was stated to be the prevailing rate; and *thirdly*, that without measuring the land held by the defendants, the plaintiffs in their notice of enhancement stated that, after measurement of the land held by the defendants, it is found that the quantity held by them was greater than the quantity for which they pay rent. But it has been held in the case of Chuni Singh *versus* Heera Mahto, Indian Law Reports, volume VII, page 623, by a full Bench of the High Court, that a suit for enhancement of rent will lie, though notice was issued at the instance of some of the sharers only. The difference between the case of Chuni Singh *versus* Heera Mahto and these cases for enhancement of rent will be considered while I will discuss the question involved in the next issues.

The second irregularity pointed out in the notice is no legal irregularity. In the notice of enhancement it is stated that the prevailing rate in respect of each kanee of *batoo* land was(80) eighty rupees; in respect of each kanee of horticultural land (70) seventy rupees; in respect of each kanee of land producing sugarcane (40) forty rupees; in respect of the first rate agricultural land (20) twenty rupees; in respect of the second rate agricultural land (16) sixteen rupees; in respect of palita or unculturable land (12) twelve rupees per kanee; and, lastly, in respect of the land covered with drains (10) ten rupees per kanee. But in opening the case it was stated on behalf of plaintiffs that the different rates stated in the notice in respect of different classes of lands were not the prevailing rates. But the prevailing rate of the mehal for all sorts of land was (10) ten rupess per *kanee*. There can, I think, be no doubt that different rates mentioned in the notice of enhancement in respect of different classes of lands had most probably never been prevailing within the boundary of the world we inhabit. But this fact does not make the notice quite illegal. The fact of plaintiffs stating such imaginary rates as the prevailing rates of the mehal only tends to show that plaintiffs are a class of men who have not the least regard for truth, and they can speak anything under the sun. The notice was another threat to defendants, intimidating them that, either they would pay at the rate of Rs. 10 per kanee, or by resorting to the Civil Court the plaintiffs would enhance the rate from 7½ to (80) eighty rupees per each kanee of land. But I have already observed that this suit of exaggeration, however absurd, does not constitute any legal flaw as suggested by defendants' vakeel. The third irregularity

pointed out in the notice of enhancement is that plaintiffs now admit that they never measured the land held by defendants; but in the notice it was stated that, after measurement of land, it was found that the quantity of land held by the defendants was greater than the quantity for which rent was being paid by them. This fact also does not constitute a legal irregularity, but it directly proves that plaintiffs have spoken a downright falsehood. The notice of enhancement served upon the defendants is, therefore, in my opinion, free from any legal flaw, and I find that suit for enhancement of rent is maintainable upon such notice.

Second issue.—The second issue is whether plaintiff or plaintiffs as proprietors of a fractional share of an estate are entitled to sue the defendants for enhancement of rent in respect of, and in proportion to, their or his share alone. In the case of Gani Mohamed *versus* Moran, I. L. R., volume IV, page 96, it has been held by a full Bench of the High Court that "one co-sharer cannot enhance the rent of his share, such an enhancement being inconsistent with the continuance of the lease of the entire tenure. But by a subsequent full Bench ruling it appears that the principle laid down in the case of Gani Mohamed *versus* Moran was indirectly overruled. In the case of Chuni Singh *versus* Heera Mahto the Hon'ble Sir Richard Garth, Chief Justice, observed:—"It is true that all the co-sharers ought to join in bringing any suit of the kind; but suppose that some of them refuse to join as plaintiffs, section 32 of the Civil Procedure Code provides that no one shall be made a plaintiff in a suit against his will. In that case, are those who desire to bring a suit to be deprived of their rights because the others will not join as plaintiffs? The reason of their refusing to join may be that they are colluding with, or influenced in some way by, the tenants. Are these recusants to be allowed to deprive their co-sharers of the means of enforcing their just dues? I think not. The simple and obvious remedy for such a state of things is to allow the co-sharers who wish to sue to do so, but making the recusant co-sharers defendants in the suit." But the Hon'ble Mr. Justice Morris and the Hon'ble Justice McDonell, who differed with Chief Justice in that case, observed:—"Any proprietor, however minute his interest may be, may set the law in motion, and disturb pre-existing arrangement without the previous consent of his co-sharers * * * * and if it be sufficient for a part-owner, after issue of a general notice, to make his co-sharers parties as defendants to an enhancement suit, then a tenant is always liable to be exposed to the caprices of individual shareholders, and perhaps to prolonged litigation, for I can see nothing to prevent, year after year, a fresh suit for enhancement being brought by each separate shareholder. The plaintiff in each suit would take care to remedy the defects in proof of his predecessors, and so tenant would be forced eventually to succumb." This observation of the Hon'ble Mr. Justice Morris is perfectly applicable to these cases of enhancement of rent. In each of these 12 cases one or two co-sharers of an ijmalee talook, whose share is very small, with a view to harass the tenant, and thereby to compel them to yield to his or their demand, has set the law in motion, and they have almost succeeded in reducing these once prosperous and well-to-do ryots to a most penurious condition. Now in following the principle laid down in the case of Chuni Singh *versus* Heera Mahto, the best method would be that a suit for enhancement of rent should be brought by a co-sharer, only it must be first ascertained whether his other co-sharers are in collusion with the tenants. If it is found that the co-sharers of the plaintiffs are in collusion with the tenants, then, following the views taken by the Hon'ble Chief Justice, it is to be held that the suit for enhancement is maintainable. But, on the contrary, if a co-sharer, without previous consent of his other sharer, sue any tenants of the ijmalee estate for enhancement of rent, and if in such a case it is found in the facts before us that the object of the co-sharer is simply to harass the tenants, then the view taken by Hon'ble Mr. Justice Morris may most equitably be followed. Thus it will obviate the difficulties which are sometimes created by the conflicting decisions of the superior Court. In the present cases there is another question which ought to be noticed here. Some of those defendants, while executing kabuliyats in 1283 B.S. to some of the co-sharers of the ijmalee estate, bound themselves by a stipulation, contained in those kabuliyats, to the effect that those co-sharers shall have the liberty to realize rent either jointly or separately. But I doubt whether that term in the kabuliyats has given to one or two of these co-sharers, to whom the kabuliyats were executed, the power to sue the defendants for enhancement of rent under the present circumstances of the case. Besides, the principle laid down in the case of Gani Mohamed *versus* Moran, I. L. R., volume 4, page 96, has not been directly overruled. Under such circumstances, I think that these suits for enhancement, at the instance of some of the co-sharers only, are not maintainable, according to the existing law on the subject. But as I have taken down the evidence in the cases, it is desirable that my finding on the other two issues should also be given.

Third issue.—The third issue is whether the rate of rent paid by the defendants is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent. The plaintiffs in these (12) cases have put in evidence 129 kabuliyats obtained from the different tenants of the estate. These kabuliyats show that the ryots who executed them are paying rent to plaintiffs at the rate of Rs. 10 per each kanee of land of all description. All these kabuliyats have been duly attested, and it has been also proved that the ryots who executed them are the same class of ryots with the defendants. But out of these 129 kabuliyats which were executed in respect of 57 separate holdings only, it appears that only 19 of these were executed in 1282 B.S. Of the remaining 110 kabuliyats, 62 were executed in 1287 B.S., 12 during the year 1288, and the remaining 36 in the year 1289 B.S. I have already observed that, after the result of the riot case, the ryots were very much frightened, and consequently they began to yield to

any unreasonable demand made by plaintiffs. It has been stated by plaintiff's principal witness, Eshwar Chandra Das (witness No. 53), that majority of the ryots, who are of the same class with the defendants, are paying rent to plaintiffs at the rate of Rs. 10 per kanee. Now, there are several other witnesses who also deposed that majority of the same class of ryots are now paying rent at the rate of Rs. 10. Now, if the majority of the same class of ryots are really paying rent at the rate of Rs. 10, then, whether under the High Court ruling reported in 9 W. R., page 83, such rate should be considered as the "prevailing rate" of the mehal. In the case of Sadhu Sing *versus* Ramaroograha, late reported in 9 W. R., page 83, it has been held by Mr. Justice D. N. Mitter that the words "prevailing rate" used in section 17 must have some definite meaning attached to it. It means the rate generally prevalent, or the rate paid by the majority of the ryots in the neighbourhood. Now, the question is whether any recently re-adjusted rent can be called a prevailing rate. In my opinion, a recently re-adjusted rent can by no means be called a prevailing rate in the sense in which that expression has been used in the section 18 of the Rent law. The case of Surahutoonissa *versus* Gyanee Bakton, 11 W. R., page 142, though not exactly similar to the present cases, yet the principle followed in that case will show that the rate of rent which was decreed against certain tenants was not considered as the prevailing rate while the landlord demanded rent at the same rate from his other tenants. I quote this case only to show that re-adjusted rate of rent cannot be considered as the prevailing rate of any mehal. But in these cases, when it is proved beyond all reasonable doubts that re-adjustment of rent took place in consequence of coercion, deception, and fraud practiced upon the ryots, there can be no doubt that it is not the prevailing rate in any sense of the terms. In order to show that plaintiff's alleged re-adjustment of rent was the result of coercion, I shall first extract some passage from the evidence of witnesses Nos. 53, 55, 60 and several other tenant-witnesses.

The witness No. 53, Eshwar Chandra Das, stated that he is a gomasta of some of these plaintiffs; that before the year 1282 the tenants were paying rent at the rate of Rs. 7-8 per kanee; that in 1282 B. S. most of the tenants agreed to pay rent at the rate of Rs. 10, and also agreed to execute a kabuliyat, but the tenants also asked for pattah. The landlord, owing to some reason or other, refused to grant pattah while demanding kabuliyats from the defendants, and consequently the agreement was broken off. And in 1283 B. S., when the rent was demanded by plaintiffs at the rate, of Rs. 10, all the tenants of the mehal refused to pay rent at that rate and that a petition was presented by ryots to the Magistrate, stating therein that breach of peace is apprehended. I here quote the exact words the witness stated in Bengali:—

সেই বৃদ্ধি জমায় খাজানা তলব করা মাত্র ১২৮৩ সনের বৈশাখ কি জ্যৈষ্ঠ মাসে প্রতিবাদী শান্তি রক্ষার জন্য দরখাস্ত করিল। তাহাতে ফৌজদারী আদালতে মালিকগণ ও প্রজাগণের তলব হয়। সেই সময় গোলাম আলীর অংশ হইতে জমা বৃদ্ধির নোটিস দেওয়া হইল। সেই শান্তি রক্ষার মোকদ্দমায় গোলাম আলী মাজিষ্ট্রেকে জমা বৃদ্ধির নোটিস দেখাইয়া বলিল যে আমি ফৌজদারী করিব না আমি জমা বৃদ্ধির নোটিস দিয়াছি।

Now, if Golam Ali and almost all the tenants of the mehal were fighting with each other in 1283, and if, at the instance of Golam Ali, notices of enhancement were issued in the month of Poush 1283 B S., then is it not absolutely impossible even to suppose that tenants were amicably paying rent at the rate of Rs. 10? In order to establish that Rs. 10 per kanee is the prevailing rate of the mehal, the plaintiffs were trying to prove that since 1282 the tenants of the mehal were paying rent to Golam Ali alone at the rate of Rs. 10. The reason for their stating that tenants were paying at the rate of Rs. 10 to Golam Ali alone since 1282 is simply this: that other co-sharers had been in 1283 reconciled with the tenants and accepted kabuliyats in which the tenants agreed to pay rent at the rate of Rs. 8 or Rs. 8-8 Now, as Golam Ali did not accept any kabuliyats, it is very easy for these most unscrupulous witnesses to state that majority of the tenants were paying rent at the rate of Rs. 10 to Golam Ali since 1282; and consequently as the rate of Rs. 10 per kanee prevailed in the mehal for the last eight years, the rate of Rs. 10 per kanee must be held as the "*prevailing rate*" of the mehal. But even if it is admitted for the sake of argument that Golam Ali had been in receipt of rent at the rate of Rs. 10 per kanee since 1282 B. S., still that would not be considered as the prevailing rate, inasmuch as majority of the tenants were at the same time admittedly paying at the rate of Rs. 7-8 and Rs. 8-8 per kanee to the other sharer of the mehals. Many of the plaintiff's witnesses admitted that Jagadamba, who is one of the co-sharers of the mehal, was receiving rent from the majority of tenants at the rate of Rs. 8-8 per kanee. The witness, No. 53, Eshwar Chandra Das, stated:—এই মহালের প্রজাগণ মধ্যে জোটের প্রজা ভিন্ন, বাধ্য প্রজাগণ মধ্যে ॥০ আনী কি ॥৵০ আনী পরিমাণ প্রজা জগদম্বাকে ৮॥০ টাকা নিরিখে খাজানা দিয়া থাকে।, *i. e.*, besides the tenants who have combined, half or more than half of the tenants pay rent to Jagadamba at the rate of Rs 8-8 per kanee. Then, again, let us turn to the evidence of Gahar Ali, the witness No 60, who is a naib of some of the sharers, and who also, like the defendants, hold land within this taluq, and who has at the same time purchased a portion of the taluq himself. This is the most important witness. This witness, contradicting most materially the other 40 witnesses, stated that all the tenants of the mehal began to pay rent at the rate of Rs. 10 in 1284 B. S. This witness also admitted that tenants are paying rent at the rate of Rs. 8-8 to Jagadamba জগদম্বার অংশে ৮॥০ টাকা ৮ টাকা নিরিখে খাজানা দিয়া

থাকে ।. Then, again, this witness, contradicting some other witnesses, stated that he saw even the defendants paying rent at the rate of Rs. 10 to Golam Ali in 1286 B.S. Elsewhere this witness made another utterly improbable and contradictory statement by saying that Golam Ali issued notice of enhancement in 1287 B. S.

Now I find that almost all the witnesses of plaintiff's admitted, *first*, that in 1282 and 1283 B. S. all the tenants of the mehal combined against the landlords in order to resist their demands of rent at the rate of Rs. 10 per kanee; *secondly*, that most of these tenants afterwards in 1283 were reconciled to the rest of the sharers, except to Golam Ali, and consequently they executed kabuliyats to other sharers agreeing to pay rent, some at the rate of Rs. 8 per kanee, and others at the rate of Rs. 8-8; *thirdly*, that again in 1286 B. S. almost all the tenants of the mehal rose against Golam Ali, and in consequence of which a serious riot took place. These are the three facts which nobody can deny. Now, in the face of these three facts is it possible to suppose that majority of tenants began to pay rent at the rate of Rs. 10 to Golam Ali in 1283, and continued to pay him at that rate till 1287, when a fresh disturbance arose, and then again, after the result of that riot case, tenants returned to Golam Ali and began to pay him rent at that rate as before. The plain fact is that those witnesses who deposed that majority of ryots were paying rent to Golam Ali at the rate of Rs. 10 per kanee since 1283 or 1284 must have spoken falsehood, and the numerous inconsistences and contradictions which are to be found in the evidences of each of the last 45 witnesses are greatly owing to their utter inability to reconcile the two most contradictory facts, namely, *first*, that Golam Ali was issuing notice for enhancement of rent in 1283 B.S.; *secondly*, he at the same time was in receipt of that enhanced rate of rent from the very same ryots. After carefully sifting the evidence of the last 50 witnesses examined by plaintiff, I find that in 1282 all the landlords attempted to raise the rent of the mehal from Rs. 7-8 to Rs. 10 per kanee, in consequence of which there arose a likelihood of breach of peace. The Magistrate of the district then summoned both the parties to execute penal recognizance for keeping peace, and most of the landlords, thereupon abstained from using any force towards the ryots. Amongst these landlords, those who were more prudent and less daring and rapacious were reconciled with the ryots, and accepted kabuliyats from them agreeing to take Rs. 8 or Rs. 8-8 per kanee, but Golam Ali waited for a future opportunity for harassing these ryots, and thereby afterwards making them submit to his terms. This opportunity, I think, was presented to him when that most able and energetic District Magistrate, Mr. Kelleher, left the district. For in 1286 Golam Ali had again resorted to the use of force, and special police arrangement was made for the preservation of the peace of the locality. But the result of the riot case in 1286 B.S. gave an undue advantage to Golam Ali, in consequence of which, as I have before observed, he succeeded in compelling the large number of tenants to give up the *jote* and to execute kabuliyats to him agreeing to pay rent at the rate of Rs. 10 per kanee as demanded by him in 1283 B.S. Now, most of these kabuliyats executed under the circumstances during the years 1287, 1288, and 1289 have been put in evidence in support of the allegation that Rs. 10 per kanee is the prevailing rate of the mehal. But these kabuliyats are, in my opinion, not sufficient to prove the prevailing rate for the following reason :—

First.—The rate of rent recently re-adjusted by use of threat and coercion cannot be considered as prevailing rate.

Secondly, If the rate in which the rent is received from the majority of ryots by one of the several co-sharers of a mehal be considered as prevailing rate, then it has been proved that Jagadamba, one of the co-sharers of this mehal, receives rent from the majority of the ryots at three different rates, *i.e.*, Rs. 7-8, Rs. 8, and Rs. 8-8 per kanee; consequently the rate in which Jagadamba receives rent is *afortiori* the prevailing rate of the mehal.

Thirdly, while different shareholder receives rent at different rates on account of the recent re-adjustment of rent, the prevailing rate is the rate which uniformly existed throughout the mehal before such re-adjustment had taken place, and consequently I find that Rs. 7-8 per kanee, *i.e.*, the very rate in which the defendants are at present paying rent to Golam Ali, is the prevailing rate of the mehal. It has been also proved by plaintiff's other witnesses that Rs. 7-8 per kanee is the prevailing rate payable by the same class of ryots with the defendant for land of similar description and with similar advantages in the places adjacent. Plaintiff's witness, No. 4, Goluk Chandra Guha, appears to me to be the only witness whose testimony is quite unimpeachable, although in his capacity of an executor he is a co-sharer of the taluq, and in every respect an interested witness. This witness, in the cross-examination, admitted that he holds land as superior karshadar in chur Patni Bhanga, which is a neighbouring village to the mehal Bhanga in which the defendants hold land. Now, the defendants are also admittedly superior karshaholder. For almost all the witnesses of the plaintiff's stated that defendants sub-let their lands to the cultivators on a ryoti tenure, and the defendants themselves have resident hereditary ryots under them. Now, the karsha holding of Goluk Chandra Guha is exactly of the similar nature with the holdings of these defendants, and Goluk Chandra Guha pays rent at the rate of Rs. 7-8 per kanee for the land held by them. I quote the evidence of Goluk Chandra Guha here in order to show that plaintiff's own witness admitted that Rs. 7-8 per kanee is the prevailing rate payable by the same class of ryots with defendants. This witness stated চর পত্তনি ভাঙ্গা আমার উপরিস্থ কর্ষা হকিয়ত। চর পত্তনি ভাঙ্গা আমি ৭॥০ টাকা নিরিখে মালিককে খাজানা দিয়া থাকি। The other witness of the most unimpeachable character is the witness No. 8, Prabat Chandra Gangopadhya, who is the naib of Baboo Kali Krishna Tagore. But his testimony does not prove anything. This witness does not know any of the defendants or the nature of the land held by them. He only stated that within the zemindary of Baboo

Kali Krishna Tagore the cultivating tenant pay rent at the rate of Rs. 10 per kanee. Now, most probably the cultivating tenants mentioned by this witness, Prabat Chandra Ganguli, are the tenants of the same class and of the same status with those who hold lands of defendants. This is very strongly confirmed by the testimony of the plaintiff's witness No. 12, Jaharaidd. This witness stated that he is a resident hereditary khoodkhasta ryot, and holds bastoo land of defendants. I here quote his testimony in Bengali ১২৮৪ সনের পূর্ব্বে সকলেই ৭॥০ টাকা ৮॥০ টাকা হারে খাজানা দিত। ১২৮৪ সনের পর জমা বৃদ্ধি হইয়াছে। elsewhere he states বাদিগণের মধ্যে ১৫। ১৬ সৎসর যাবৎ জমি ভোগ করি কিন্তু প্রতিবাদিগণের অধীনে ৪০। ৪৫ বৎসর যাবৎ বসত বাটী ভোগ করি। I hold agricultural land under plaintiff since 15 or 16 years, but I hold homestead land or bastoo land under defendants since the last 40 or 45 years. Now, it will be observed that these defendants, whose status is almost like that of middlemen, in consequence of their holding the land from generation to generation, and whose liability to pay rent at an enhanced rate is a matter of grave doubt, were reduced to the condition of mere tenants-at-will by the wickedness of a greedy and rapacious landlord, of whom they hold this land. If the land held by them has been at all improved, if the jungle has been turned into a flowery garden, and the marshes into the green field, it is at their expense alone, and undoubtedly not at the expense of these greedy, avaricious landlords, who have no hesitation to employ any means, however foul, to harass and molest these poor, unoffending people.

I have already observed that the rate of rent recently re-adjusted by use of coercion and force cannot be considered as prevailing rate in the sense in which it is used in section 18 of Act VIII of 1869. The expression "prevailing rate" had never been in use before Act X of 1859 had come into operation. The words "*established pergunnah rate*" was used in the old Regulations in lieu of what we now call "prevailing rate." But the expression "pergunnah rate" was found to be so vague and undefined a term that it was thought necessary to change it into the expression "prevailing rate." Now, in order to ascertain the real meaning of the word prevailing rate, it is necessary to analize the various elements which constitute what was formerly called pergunnah rate. Any re-adjusted rate which is not so adjusted in accordance with any established custom, or in accordance with any particular law, on the subject, was not considered as the established pergunnah rate. Similarly, in the present day no re-adjusted rate can be called a "*prevailing rate,*" unless it is shown that such re-adjustment was made according to law or any custom having the force of law. But how the plaintiffs in these cases re-adjusted the rate? Simply by coercing the ryots to pay rent at an enhanced rate. The witness No. 29, Forman, and the witness No. 30, Goluk Mondal, though undoubtedly false witness, yet could not help stating that the ryots executed kabuliyats to plaintiff agreeing to pay rent at the rate of Rs. 10 simply because they found it was very difficult to fight with the landlord. I quote the words of the witnesses here. The witness No. 29 states যাহারা পরে ১০৲ টাকা নিরিখে খাজানা দিতে সম্মত হইয়া বাদির বাধ্য হইয়াছে তাহারা বাদির সঙ্গে লড়িতে পারে না, এই জন্য বাধ্য হইয়াছে। *i.e.*, those who subsequently agreed to pay rent at Rs. 10 per kanee, they did so simply because they were incapable of fighting any longer with plaintiffs. The witness No. 30 states হাকিম বৃদ্ধি খাজানা চাহিলে আর ছাড়া ছাড়ি নাই। If landlords demand at an enhanced rate, there is no other alternative but to pay it. Then, again, almost all the principal witnesses of plaintiffs stated that in 1286 B.S. more than three-fourths of the ryots combined and formed into a jote, and refused to pay rent at the rate of Rs. 10 per kanee. Now, even if it is admitted, for the sake of argument, that plaintiffs succeeded in raising the rate of rent in 1283 from the majority of the ryots, yet the very fact that those ryots refused to pay rent at that rate in 1286 B. S. creates a break in the prevalence of the rate, and thereby utterly destroys the stability of its nature, which is an essential ingredient of its becoming a "prevailing rate." The case which plaintiffs tried their best to make out is that some of the sharers of this mehal succeeded to raise the rate from Rs. 7-8 to Rs. 10 in 1283, and the tenants continued to pay at the rate till 1286 B. S., when they again refused to pay at that rate. But subsequently in 1287 these tenants once more began to pay at that rate of Rs. 10. Now, I have already shown that it was impossible to suppose that any of the co-sharers ever succeeded to raise the rent to Rs. 10 in 1283. But if for the sake of argument even it is admitted that either Golam Ali or any of his co-sharers succeeded to raise the rate of rent from Rs. 7-8 to Rs. 10 in 1283 B. S., would that help these plaintiffs to set up that Rs. 10 is the prevailing rate of the mehal, when other sharer, such as Jagadamba, receives at the former rate of Rs. 7-8 or Rs. 8-8 from the majority of the ryots? Even the witness No. 60, Gohar Ali, who also holds land within the taluq like the defendants, admitted that he pays rent at the rate of Rs. 10 to Golam Ali alone, and the several other co-sharers of the mehal receive from him at the rate of Rs. 7-8 per kanee. If Golam Ali, who is one of the numerous shareholders of this taluq, and whose share of this taluq is less than one-fourth, has by use of force and coercion, or by employment of variety of unfair and fraudulent means, succeeded to compel the majority of ryots to pay rent at the rate of Rs. 10, would such re-adjusted rate be considered as the "prevailing rate" of the locality? I find that Rs. 7-8 per kanee is the prevailing rate of the mehal, but the majority of the ryots in 1283 B. S. agreed to pay rent at the rate of Rs. 8 and Rs. 8-8 per kanee. To this increase they gave their consent in order that the landlord should cease to molest them any longer. But they were sadly disappointed in their expectation. Of course Jagadamba and other sharers, who were not being oppressive zemindars, were quite satisfied with this increase. But Golam Ali

never ceased to trouble these ryots. On the contrary, he has now turned the Civil Court into a sort of machinery for the infliction of a refined torture upon these poor ryots. It is needless to dwell upon this subject any longer. It is sufficient to say that the plaintiffs have totally failed to prove that Rs. 10 per kanee is the prevailing rate of the mehal. And it is found that the rate of Rs 7-8 per kanee, which had been prevailing before 1282 B. S., is the prevailing rate of the mehal. The plaintiffs are, therefore, declared not entitled to get any increase in the existing rate of rent from the defendants. * *

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CHANDI CHARAN SEN,

First Munsiff of Barisal.

The 1st April 1884.

C. E. G. & W. J.—Reg. No. 4308C—307—24-7-84.

From—Babu Vipina Chandra Rai, B.A., B.L., Mupsif of Baraset,
To—A. P. MacDonnell, Esq., Officiating Secretary to the Government of Bengal.

With reference to your circular No. 9T—R of the 5th ultimo, I have the honour to submit herewith my opinion on the Bengal Tenancy Bill as amended by the Select Committee. I regret that press of official work did not allow me to devote to the subject that amount of time and attention which its extreme importance demands.

2. The Bill has undergone at the hands of the Committee an important alteration in one of its cardinal principles. In the original Bill the maximum rent of the occupancy ryot was fixed at one-fifth of the gross produce in staple crops, (S.75) and that of non-occupancy ryot and the under-ryot at $\frac{3}{10}$ths of such produce. (S. 119) Thus the rents of all classes of ryots were what may be called 'arbitrary' or protected rents. In the amended Bill the rent of the occupancy ryot remains a protected rent, *i.e.* old rent, such rent to which the old rent may be enhanced under its provisions. The rent, however, of the non-occupancy ryot has been altered to a competitive rent. His initial rent is competitive under section 56; and his enhanced rent to be determined under section 60 by the court is to be 'fair and equitable,' *i.e.* to be competitive rent. If the courts interpret 'fair and equitable' to mean anything else than 'competitive,' the landlord will fall back on section 59 and eject him on expiry of lease and put in another at the then competitive rent. Again, the rent of the under-ryot is fixed at 25 to 50 per cent. more than that of the occupancy ryot This restriction will not avail the under-ryot if such rent be less than competitive rent; for the subletting ryot will be sure to demand and exact the difference by way of *salami* or foregift. So in reality the under-ryot will also have to pay a competitive rent. I consider this alteration of the rent of the non-occupancy ryot and the under-ryot from a protected or arbitrary rent of the original Bill to a competitive rent in the amended Bill to be fraught with many dangers. (*a*) With increase of population the demand for land will increase and the competitive rent will go up higher and higher. This will make subletting more and more profitable and will thus encourage instead of discouraging it. (*b*) Beginning with an initial competitive rent the ryot, who will in future acquire occupancy status, will have to pay a far higher rent than the present occupancy ryot. As payment of a lower rent than the prevailing rate is retained in the Bill as a ground for enhancement of rent and payment of a higher rent than the prevailing rate is *not* a ground for abatement, the rent of all the occupancy holdings will in course of time be levelled up. (*c*) But the most dangerous result of not protecting the non-occupancy rent remains to be considered. A protected rent for the present occupancy ryot and a competitive rent for the non-occupancy ryot, taken with the right of free sale given to occupancy ryots, mean that it is only a question of time when the occupancy ryots also will have to pay either a virtually competitive rent or a rent very much near it. The occupancy ryots of that time will consist of (1) purchasers from the present occupancy ryots; (2) persons who will hereafter acquire occupancy status; and (3) heirs of the present occupancy ryots I will first take the purchasers. The puchase money which shall have to be paid for the occupancy holding will include that which is paid for securing a rent lower than the initial non-occupancy rent which is under the Bill a competitive rent. Suppose A wants to sell an occupancy holding on which a rent of Rs. 5 is reserved, but for which the landlord may obtain Rs. 9 from a non-occupancy ryot. A will demand and B, the purchaser, will pay as part of the purchase money such a sum which according to them yields an annual profit of Rs. 4. Thus B's virtual rent will be Rs. 9 (the same as for non-occupancy ryot, *i.e.* competitive rent), made up of Rs. 5 as payable to the landlord and of Rs. 4, being the annual profit of part of the purchase money. I am aware that the Right Hon'ble Mr. Longfield considers this an incorrect way of looking at the matter. According to him 'to call this (*i.e.* a reasonable interest on the purchase money) rent is an abuse of language' (p. 91, Cobden Club Land Tenures). But at another place of his essay he himself looks into the matter in exactly the same way as I have done here. There he says 'the price of tenant right is often so high that the interest of the purchase money together with the rent is much more than the fair value of the land.' (p. 39.) A conclusive proof, however, of the error of this eminent writer, in supposing that interest on purchase money forms no part of the virtual rent, may be had from the consideration of a fact noticed by the Bessborough Commission. In their report, paragraph 22 (quoted by Mr. Justice Field in his book on Landholders and Landholding, p. 315), the Commission observe: "If, however, he (the landlord) waited for a sale of tenant right and then announced the increase (of rent) * * * and the sale went on, and the increase of rent submitted to, the outgoing tenant generally had to bear the loss, in which case it was common to deduct £20 from the purchase money for every £1 added to the rent." It is thus clear that the tenants fully understand that a part of the purchase money actually represents that part of the rent, which, in addition to the rent reserved on it, the holding would be liable to pay if the tenant had to bargain directly with the landlord. Thus so long as the rent of non-occupancy is left to competition, the purchasers of occupancy holdings shall likewise have virtually to pay competitive rent.

The next class is that of persons who will in the future acquire the occupancy status. They will under the Bill begin with a competitive rent which will, under the enhancement rules of the Bill, be enhanced as staple food crops increase in price. Their rent will therefore be, if not exactly competitive rent, at least very much near it. On the ground

that they pay less than the prevailing rent, the rent of the descendants of the present occupancy ryots will also be enchanced to very much near the competitive rent.

3. It is for the above reasons essentially necessary that the rent of the non-occupancy ryot should be protected and not left to competition. I am not sure if it is still open to urge that the rent of all classes of ryots should be the same. If it is, I should earnestly request that his Honor the Lieutenant-Governor should again try for the acceptance of that sound principle. It is, I believe, the only true remedy for some of the gravest evils of the Tenancy Law of Bengal. It minimizes (1) the landlord's opposition to the growth of occupancy right, (2) the occupancy ryot's desire to sublet, and (3 the non-cultivating mahajan and speculator's desire to purchase occupancy holdings. The only objection to the equalization of rent for all classes of ryots from a ryot's point of view is that the value of the occupancy right will be greatly reduced and limited to the price paid for immunity from ejectment and for improvement made by the ryot. It is, I believe, admitted by all that the occupancy holdings have become saleable only in modern times. That its average value has become, within such a short period, so high as 9·2 times the annual rent, almost equal to the value of ryoti holdings on fixed rent, which is 9 5 times the annual rent (paragraph 14 of your letter of the 27th September 1883 , has been the result of the rent of non-occupancy ryots becoming a competitive rent under Act X of 1859 and the rent of occupancy ryots remaining almost fixed owing to the want of workable rules for enhancement. The enhancement provisions of the present Bill are quite easy of being successfully appealed to, at least in some cases ; the value of occupancy holdings is therefore likely to fall to some extent. But even if that point be wholly kept out of view, I consider that it will be far better for the ryots and for the country to enact such provisions as to decrease the price of occupancy holdings than others which will tend to compel all occupancy ryots to pay in the future a competitive rent or something very like it. It will be a poor accomplishment if the Bill before the Legislature only protects the present occupancy ryots. I consider it therefore of the first importance that the rent of the non-occupancy ryot should be protected by fixing the same rent as that of the occupancy ryot, or, if that is not possible, by fixing a slightly higher rent bearing a definite proportion to such rent; and that *salami* or foregift should be prohibited: for, unless *salami* be prohibited, the fixing of the rent for any class of ryots will be only a shadow.

4. The revision of the whole Tenancy law was undertaken on the ground that it will be unfair to grant the landlords easy methods of recovery and enhancement of rent without, at the same time, protecting the rights of the ryots. I fail to see how the ryots are protected under the Bill when the only change in their status is the ease with which the rent of the occupancy ryots may be enhanced. When 90 p. c. of the ryots are admitted by the zemindars to be occupancy ryots, surely it is no hardship to the zemindars, if, while the rent of these 90 p. c. is changed from an almost practically fixed rent to an easily enhancable one, the rent of the remaining 10 p. c. be protected by law from competition. There are only two interpretations of the Regulations of 1793. According to one the zemindars were not at all entitled to enhance. According to the other, though the zemindars had a right to enhance every ten years, they have by their own laches made such ehancement impracticable. Under neither of these interpretations can the zemindars claim easy methods of enhancement unless they are at the same time prepared to make concessions. They cannot therefore object if the Legislature limit the rent of the non-occupancy ryot. But if the Legislature do not now protect his rent they will have a generation hence to meet difficulties and complications which will require far more drastic measures to remedy than we can now imagine or anticipate.

5. Having considered the alteration in one of the fundamental principles of the Bill, I will now proceed to consider such of its provisions which I am in a position to comment upon.

Chapter II.—The distinction between the tenure-holder and the ryot is rightly drawn in the Bill by the test of the primary purpose of their acquiring the lands. The purpose of the one is to cultivate; that of the other is to collect rent. But the descriptions of both of them are defective by reason of not including persons who hold land under unregistered lakhirajdars and dependent taluqdars. These two classes do not fall under proprietors as defined in the Bill, nor under tenure-holders, as these never acquired the right to collect rents from the proprietor. I may in passing note that the position of the adverb "primarily" in cl. 1 and 2, section 5, may lead to misconstruction, and therefore should be so changed as to distinctly show that it refers to the purposes of acquisition. The presumption in cl. 5, section 5 is only rebuttable one. As only very few ryots cultivate more than 40 bighas of land, the presumption, to be fair and to be in accordance with existing facts, should be in favour of all tenancies of more them 50 bighas in area. An area of 100 bighas, as in the Bill, is too high for existing facts.

6. The provision regarding the converted tenure-holder (S. 37) is an improvement in the Bill. It will allow the occupancy status to attach to the actual cultivators to whom that status ought to be confined. But in order that it may accomplish its object fully, all subleting occupancy ryots, except those who sublet for necessity (cl. *a*), should be converted into tenure-holders, irrespective of the quantity of land and the number of years for which they sublet. The zemindar's objection to such conversion should be met by making the converted tenure-holders subject to rights of pre-emption and distraint. In other words, the converted tenure-holder should, as regards his landlord, continue to be treated as a ryot. But as regards his sublessee he should be regarded as a tenure-holder. This will, better than the provisions

in the Bill, discourage the speculators and the mahajans from buying occupancy holdings. The converted tenure should be sold in execution of decrees (*a*) subject to registered and notified encumbrances, and if it does not fetch sufficient price, then only (*b*) with power to annul those encumbrances. I may note here that the right of distraint left to the zemindar may be counteracted by the sublessees contracting to pay to the superior landlord direct the rent payable to him and the balance to the sublessor. That this is a common arrangement now resorted to is known to every body who has any experience of the internal economy of the country.

7. *Chapter III.*—The disclaimer of the landlord's title by the tenant (tenure-holder or ryot) without any reasonable ground in any suit brought by the landlord against the tenant for the enforcement of any liability of tenancy ought, in my humble opinion, to be added as a ground for ejectment. This will discourage the tenants raising false pleas denying the landlord's title which has become so common and which introduces so much complicity in rent-suits. It will be consonant with case-made law that now obtains in the country. My proposal, it may be noted, differs from the provisions in the C. B. S. 79 and B. B. S. 72 in three points: (1) the suit must be for the enforcement of a liability of tenancy, (2) the tenant must be a party, and (3) the disclaimer should be without reasonable cause.

8. *Chapter IV.*—The presumption of paying fixed rent on proof of payment of uniform rent for 20 years should be retained as it is. The objection that the presumption being continued every year renders it less in accordance with facts and also increases the landlord's difficulty of rebutting it is I think met by the restriction contained in the proviso to cl. 2, S.64. And the objection that auction purchasers, who do not get any papers from the former owners, find much difficulty is met by the right given to them under section 112 to apply for a record of rights. The presumption could not be removed; for, as observed, it would be equivalent to an absolute bar to every claim of this nature; and to increase the number of years would add to fraud and forgery, because the ryots are generally negligent and do not preserve their receipts at all carefully.

9. *Chapter V*—Having regard to exceptionally large estates, I think a local limit, as so many miles from the settled ryot's homestead, may be advantageously introduced to restrict his holding on occupancy status I have no knowledge about butwaras in either Behar or in Eastern Bengal, and cannot give any opinion as to what date ought to be fixed.

Among the incidents of occupancy right, a clause should be added making forfeiture as the penalty of disclaimer (*vide* my remarks under *chapter III*). The question of transferability of occupancy right has been so much discussed that I fear if I enter on it I shall only repeat what has been urged much better by others. I shall therefore restrict myself only to a few points to which I want to draw your special attention. I will not trace the growth of the transferability to its origin. But, taking it at a time when it has partly grown, I think it may be asserted, without any fear of contradiction, that the value of occupancy holdings increased to what it has become owing to the provisions of Act X of 1859 If the previous sale laws gave the people an idea of competitive rent, it was the statutes of 1859 that fully developed it. With the increase of value the practice of selling occupancy holdings grew apace, till we now find no district in the Lower Provinces where the practice is not more or less developed. And the present question is whether to leave the growth alone or to legalize it by statute. Now, when we speak of occupancy right becoming transferable by custom, we understand by custom an usage, like mercantile usage, which requires neither antiquity, nor uniformity, nor notoriety; which may be still in its growth and which may require evidence for its support in each case. This meaning of the word 'custom' is ignored by the advocates of the landlords. They understand it only in the sense of an usage that has obtained from time beyond legal memory. Measuring by a wrong standard, they unavoidably come to a wrong conclusion. That custom, as above defined, has grown in all districts of Bengal is seen from the statistics that have been collected, and under case-made law occupancy holdings are transferable in places where they are so by custom. If then, under case-made law the right is transferable, where is the innovation in incorporating it in the statute law? It will only tend to diminish litigation and thereby decrease fraud and forgery. But though free sale is unexceptionable in law, it is not so from an economical point of view unless the transfers could be restricted to the actual cultivators of the soil. This can be accomplished only by minimizing the purchasers' profit if they want to sublet. The best plan to do so is to equalize the rent of all classes of ryots (the korfas included) and to prohibit *salami* or foregift. I do not think that any other plan may be devised which is so free from objections. The next point in this connection is the question of hampering the right of free sale by giving the landlord a right of pre-emption. The grant of this right of pre-emption is objectionable on two grounds; 1stly, because it does not protect the landlord from bad tenants being thrust on him, and 2ndly, because bad tenants may be thrust on him by subletting and by sale of other landed interest in the estate than occupancy holdings. I need only consider the first point. This right will be of no use to the landlord when he may really require to avail himself of it. The history of the Mahomedan Huq Shuffa is a history of fraud and chicanery. There is nothing to prevent the ryot to put down in the agreement a fraudulent price. The value of land, even agricultural, to a particular person for a particular reason, may exceed its normal value in an indeterminable measure. It is for this reason that in breaches of contract of sale, while only damages are given in the case of moveable property, relief is given by an order for specific performance in the case of immoveable property. But apart from that consideration, it will be very difficult for the courts to settle the price where the landlord does not agree to the price put

down by the ryot. The examples given by the Right Hon'ble Mr. Longfield in his essay, pp. 49-50, show clearly how widely two skilful valuators differed in valuating the holdings. That the courts will be less competent than those skilful valuators, there cannot be the slightest doubt. If, notwithstanding these objections, it is thought proper to retain this right of pre-emption in favour of the landlords, the ryot's right to elect whether to sell to the landlord at the price settled by the court or not (section 32, clause 4) must be retained, as that will be the only way by which he may avoid the compulsion of having to sell his lands at less than a fair price. It ought to be pointed out that the Bill does not provide how the courts are to settle the price. Probably they will have to take evidence, oral and documentary, and examine experts. In that case it has to be provided who will bear the costs and in what proportion. Then there remains another point. What will be the procedure if the civil court and the assessors, who are associated with it, differ in their decision. Again, all gifts not registered and therefore not notified to the landlord are made invalid as against him. The object of this notice, according to the Select Committee, is to enable the landlord to question transactions which are not *bonâ fide*. It is therefore necessary to enact under what circumstances the landlord will be entitled to get rid of the donees. For, even if, in the interpretation of section 35 of the Bill, the maxim 'when one is included, the other is excluded' be not applied, and all gifts which are registered and notified be not adjudged valid against the landlord, yet it is ssible, better to have, where possible positive rules to guide the courts than to allow them to enact rules, each according to its own idea of 'equity and good conscience.'

10. Many important alterations have been made by the Select Committee in the law of enhancement. The foremost of these is the omission of the section limiting money rents to the maximum of one-fifth of the gross produce in staple crops. The objection to that maximum is (1) that it makes no distinction between the different classes of lands; (2) that it is economically vicious, as it leaves out of view the costs of cultivation; and (3) that it is extremely difficult to ascertain. Now the distinction between the different classes of lands may be recognized by fixing different maxima. It was so recognized in the Hindu and the Mahomedan time. The second objection is not formidable. The greatest part of the costs of cultivation is made up of the wages of labour. Rent is but land tax. And the objection of inequality attaches to all forms of direct taxation. A toils from sunrise to sunset to earn that amount of money which B earns by working two hours. Yet, in paying an income-tax, they pay the same amount. The third objection is the only valid one. But the difficulty is not insurmountable. Instead of taking away the only absolute check on rack-renting, Government should be prepared to meet the difficulty—nay, it is its duty to do so, considering that it admits that it neglected to protect the ryots for a very long number of years. The prevailing rate is retained as a ground of enhancement. But which is more difficult to ascertain—the prevailing rate, or the gross produce of land in stable crops? Undoubtedly it is the former. The gross produce of different classes of land may be ascertained, if not with mathematical correctness, at least with sufficient accuracy to meet the purposes of the tenancy law. Scientific correctness is not wanted. For the second ground of enhancement, the price of the stable crops for different years shall have to be ascertained. The only other factor in the calculation is the average produce of the lands. At harvest time this can be done if the Government has the requisite machinery. Error may creep in. But when the average is struck, say, for five years, a sufficiently accurate result will be obtained. Then, again, the results should also be checked by superior authorities—the Collector, the Commissioner, and the Board of Revenue. With all its errors and shortcomings this would be much fairer to the ryots than to take away the only check to their rack-rent. If non-occupancy ryot's rent remains a competitive one, if the occupancy ryot's rent is made easily enhanceable and exposed to the risk of rack-rent, wherein is protection afforded to the rent of the ryots? It is therefore absolutely necessary that the maximum should be restored in the Bill.

11. I next come to the grounds of enhancement. If the maximum limit of one-fifth of the gross produce is not restored, the first ground of enhancement—that depending on prevaling rate—ought to be omitted Rent in India was a certain share of the gross produce. And the first ground meant that if any ryot paid less than this share, he should be made to pay the share. When the prevailing rate cannot be found, and the certain share is not fixed by law, it is anomalous that any enhancement should be allowed on this ground. Then, again, it is not clear to what time should the words "land of similar description and with similar advantages" be understood to refer. I am sure, equitably, it ought to refer to the time when the tenancy was created. For if a tenant has improved his land and turned a sandy spot into a fertile field, should he be made to pay an increased rent because he has put money and labour to his land? When, on this point, I ought to notice that Sir Richard Garth's opinion is that the words should be understood to refer in most cases to the time of suit; and he bases his opinion on the argument of reclamation of waste. But as under the Bill (S. 212) waste land is not affected by its provisions, the words should certainly be understood to refer to the time of the creation of the tenancy. And how is the quality of the land at the creation of the tenancy to be ascertained? It is almost impossible to do so. For this reason also the first ground of enhancement ought to be omitted. It is further necessary, in order to protect the rent of the existing occupancy ryots, which in course of time may be enhanced by reference to that of the majority, *i.e.* those who will acquire the right in future. This point I have noticed above in paragraph 2. But even if in spite of these objections this ground for enhancement is retained, it must be made clear that it does not apply to cases where there has been an improvement of land by the ryot's agency or at his expense.

12. The second ground of enhancement is the most important ground; for, with the table of prices ascertained, it will be the easiest way to enhance rent. Two points deserve attention in this connection. One is that while, in throwing out the maximum limit of enhancement, the non-calculation of the costs of cultivation has been allowed its full force as an objection, such costs are wholly overlooked in this ground of enhancement. It will certainly be inequitable to the ryots if the costs of cultivation be not taken into account in this ground of enhancement, considering that they have no counterbalancing provision in their favour. If the maximum limit of one-fifth produce be restored, then only will this objection lose its force. If the maximum limit of enhancement be not restored, a deduction should be made for the increase of costs. What that deduction should be, I am not in a position to give any opinion. The Government of India remarks "if one fact is clearly brought out by enquiry, it is the impossibility of ascertaining the cost of the cultivation with any degree of accuracy." Now the ryot may well say: "You have struck out the limit of my rent on the ground that it is extremely difficult to ascertain the gross produce of land in staple crops You admit that it is impossible to ascertain the costs of cultivation. You should not compel me to pay a higher rent for increase of price without deducting the increase in costs of cultivation. Therefore, as you cannot calculate what increased rent I ought to pay, you must strike out this secound ground of enhancement." I am not aware that there is any sufficient answer to such argument. The second point in connection with this ground of enhancement is whether any table of price of staple crops could be ascertained for the last 15 years. The district and sub-divisional records of prices will be useless in this matter. Sufficiently accurate price lists may, however, be prepared from the books, where available, of the grain dealers.

13. As to the limits of enhancement, now that the limit of one-fifth produce has been omitted, and considering that in other provinces an increase of 25 per cent. in the course of 30 years is looked upon as considerable, I should think that none, more than that, ought to be allowed. If the period of intervening time between two successive enhancements be retained at 15 years in SS. 41 and 50, the limit of enhancement ought to be 12½ per cent. But I should prefer the longer period of rest, *i.e.* 30 years, and fixing the limit of enhancement on the first and second grounds of enhancement at 25 per cent.

14. The rent which may be demanded from a settled ryot on reletting land previously held at money rent is under section 42 the old rent or the old rent plus one-fourth more. The previous tenant may be (*a*) an occupancy ryot whose rent has not been changed within the last 15 years; (*b*) an occupancy ryot whose rent was enhanced within such time; and (*c*) a non-occupancy tenant. To be consistent with other sections of the Bill, S. 42 ought to apply only to case (*a*). In case (*b*) it allows a double enhancement, which may be within one year of each other. In case (*c*) it is inconsistent with the spirit of other portions of the Bill. The tendency of the section undoubtedly will be to level up the rent of occupancy ryots. The only way to meet the difficulty fully is to make the rent of occupancy ryots and that of non-occupancy ryots the same.

15. If the first ground of enhancement is retained a similar ground of abatement should be introduced. If the landlord be allowed to claim enhancement on the ground that the ryot pays less than the prevailing rate, is it just and equitable not to allow the ryot to claim abatement on the ground that he pays higher than the prevailing rate?

16. I shall next consider the bastu holdings. When a ryot's bastu is not included in his holding, he takes the bastu on the understanding that he should never be ejected and the rent is almost always a fixed one. If he makes a bastu for himself from some portion of his holding he has to lay out considerable money and labour. If a bastu is part of his holding, he pays a rent for it higher than for all other classes of land. In case where a bastu forms a part of the holding, if the holding is brought to sale, the ryot keeps his bastu and pays its rent to the purchaser; very generally the same rent and in a few cases a little higher rent. A bastu is now generally taken on a mokarari mourasi lease. The provisions about bastu lands should not be left out of the Bill. A code is generally understood to be complete in itself and the omission of all provisions from the Bill is likely to unsettle the mind of the people and may bring about unexpected and dangerous results. If the ryot loves anything more than every other thing it is his homestead and he would do almost anything to avoid losing his homestead. I will give an example of what happened within my own experience. In two suits for arrears of rent, before me at Diamond Harbour, two men falsely personated the defendants and filed rafanamas, on the day of hearing, admitting the claim. Judgments were passed on confession. The next morning, however, one of the real defendants appeared, and at his instance the plaintiff, his *factotum* and the two men who had falsely personated were brought under arrest that evening. These two men made full confessions before me, and I found that they held their bastu under the plaintiff, a most wicked middleman, and have, from fear of ejectment from their bastu, been induced to falsely personify the defendants. They had nothing to gain, nor had they the slightest animus against the defendants. It was their love for homestead that led them to commit an offence for which, poor men, they got six months' each. There is no reason to doubt that they might have been led to more heinous offences. The ryot's bastu ought therefore to be so protected, that no ryot (occupancy or non-occupancy) should be ejected from his homestead nor his rent enhanced unless it is proved that the landlord is entitled to enhance or eject under terms reserved in a written and registered agreement at the time of the creation of his holding. This will be only giving effect to the implied contract between the parties. In the case of a compulsory sale

of a holding, a part of which is the ryot's bastu, he should continue to hold his bastu and pay to the purchaser the old rent or such apportioned rent as may be fair and equitable.

17. *Chapter VI.*—In my remarks on the alteration in the principles of the Bill, I have considered the status of the non-occupancy ryot under the provisions in the Bill. I have there tried to prove that all efforts to protect the rent of the occupancy ryot will be unsuccessful if the rent of the non-occupancy ryot is left open to competition. In this place it is only necessary to call attention to a point of detail. It is not clear whether the "ryots for land of a similar description and similar advantages in the vicinity," mentioned in clause 9, S. 60, mean only non-occupancy ryots or ryots of all kinds. I believe the former is meant. This should, however, be made clear by the introduction of operative words in the clause.

18. *Chapter VII.*—In my previous remarks, I have tried to show that the provision in the Bill fixing the rent of the under-ryots will be no use; and so long as the non-occupancy rent is left to competition, the under-ryot's rent cannot possibly be limited.

The provisions, again, of limitation in the Bill will generally be difficult of application. In holdings containing lands of different classes bearing an aggregate rent, it will be very hard to apportion rent payable for the plot sublet. On these grounds the limitation on the under-ryot's rent should be withdrawn, if no limit is put on the non-occupancy rent.

19. *Chapter VIII.*—The provisions in the Bill regarding the appropriation of payments ignore that, without any declaration by the ryot, there may be an implied understanding between the parties. In a recent case before me a landlord who had obtained a decree for the years 1284, 1285, and 1286 claimed some payments made in 1288 for rent due for 1283 which had long been barred by limitation. I think in this case, unless the ryot declared that the rent was paid for 1283, an implied understanding might be presumed that the rent was for some year after 1286. Section 69 should therefore be amended so as to include implied understandings. Another amendment is also necessary to meet cases where the tenant holds more than one tenure. In such cases payments without express or implied understanding should be applied to the most burdensome rent, *i.e.* what carries the highest interest or is secured by a penalty.

In the form of receipts and accounts given in the Bill a column should be added to indicate the year for which the arrear is paid.

20. The provisions regarding interest on arrears are important. I understand section 79 to give the courts power to disallow interest payable under a contract if it be considered too high. The courts do not now possess such a power, though the late Hon'ble K. D. Pal expressed himself in Council as if they do. Such a power is undoubtedly necessary in the interest of the ryots. Six pie p. Re. p.m. or 37½ p.c. p.a. is a very common interest reserved in leases.

21. The provisions regarding damages to be fair should be the same in the case of rent improperly claimed as in that of rent improperly withheld. But while section 80 allows the landlord damages at 25 p.c. on the rent due in all cases, however exaggerated the claim might be, it only gives damages against him when the suit is without reasonable cause. Clause (2) should therefore be amended, and damages given against the landlord when the claim or any part of it is without reasonable or probable cause.

22. *Chapter IX.*—The presumption of abandonment as contained in section 96 should only be made applicable to non-occupancy ryots. As to occupancy ryots there should be no such presumption, the zemindar having a remedy in the sale of the holding. The zemindars object, that in places where, owing to the sparsity of population and abundance of land, the occupancy holding is unsaleable they have got no remedy. But are there really many places where occupancy holding is now valueless? I have not heard of any such place. Even if there be, it will be of a very exceptional character. To meet such exceptional cases, a general risk should not be run of zemindar's making illegal ejectments.

23. There is no reason why the present law should be changed and the zemindar allowed to measure anything more than the external boundaries of lakheraj lands. Measurements ordered under section 101 should actually be made by local standard; and if there is any dispute as to the standard the court or officer should decide the question before ordering the measurement.

24. *Chapter XIV.*—An important modification has been introduced in section 164 (3). When the ryot pleads that rent is due not to the plaintiff, but to a third party, he has to deposit the rent; and unless the third party brings a suit against the plaintiff within three months, the plaintiff will get the money on application. Here, the action of two strange persons is made to reverse the burden of proof in the title-suit. Under the present law, the landlord, whose title is denied, has to institute the suit and has to prove his right. Under the provision in the Bill the third person shall have to bring the suit, and therefore to prove his right. A person ought not to be compelled by the action—fraudulent it may be—of two others, to launch into a complicate title suit. This section should therefore be restored to what it was in the original Bill.

25. No restriction should be placed on the ryots' right of asking a retrial of an *ex-parte* decree. In a recent case before me for accounts and money in the hands of the agent, the accounts filed showed payments to process-servers to *gopana* or conceal summons, *i.e.* to say, not to serve the summons and at the same time to return the summons as duly served. That this fraud is practiced when considered necessary by the corrupt amla of the zemindars is notorious. In the Diamond Harbour cases, I have referred to before, summons had been served on wrong men, the peon not personally knowing them.

26. Complaint is generally made about the delay in the disposal of rent suits. I am not sure these complaints have always a sound basis. I find from the returns of my court that the average duration of uncontested suits is 26 days and that of contested one 41 days. In considering the average duration one fact must be remembered. It is that under a circular order of the High Court, no rent suit may be disposed of before 14 clear days have elapsed after the service of summons. I am of opinion that the circular should be incorporated in the law. The 14 days given to the ryots should not be reduced; for, owing to their ignorance, they require more time for their preparation. As one step of preparation he may have to get a copy, say, of an old judgment. This takes about seven days. Or he may have to take out some deeds filed in previous cases. When there is any considerable delay in the disposal of rent suits, I believe the delay may be traced to one or other of the four following reasons:—(*a*) there are more cases in the file of the officer than one man could dispose of; (*b*) there is a deeply-rooted ill-feeling between the landlords and tenants; (*c*) landlords are really trying to enhance rent though ostensibly they sue for arrears of rent; (4) or the tenants have combined to deprive the landlords of just dues. I suspect that the complaint about the delay is not always sincere. Section 256 of the Civil Procedure Code allows the landlord in all suits before a Munsif to make a verbal prayer for arrest of the defendant as soon as judgment is passed. In my six years' experience I have never known such an application made.

27. I believe, for the speedy deposit of rent suits, the following alterations should be made from the ordinary procedure:—

Copies of the plaint and summons should be filed along with the plaint.

Ordinarily the plaint should be at once registered, and summons issue calling on the defendant to appear on the 15th day from the service of summons. Summons shall be returnable on the 7th day of the order. Ordinarily therefore the case will be heard before the 22nd day of its institution, and will be disposed of on that day.

If any postponement is necessary it shall not be of more than 14 days (following the rule about 'warrant cases' in the Criminal Procedure Code).

Execution may be applied for verbally as soon as the judgment is passed.

It is the execution of the decree that is really dilatory and not the suit. Yet I have made the above suggestions in the line of the late Hon'ble K. D. Pal's proposal, for the satisfaction of the zemindars, because I believe the ryots' interest will not be at all jeopardized by the concession.

28. *Chapter XVI.*—Occupancy holdings when brought to sale in execution of a decree is under the provisions of section 179 to be sold with power to annul all encumbrances. Though this is a fair provision against encumbrances made after the date of the Bill, it will be very hard on those who have, like the Jessore under-ryots, acquired a right in the land before the date of the Bill. A proviso should therefore be made saving such encumbrances.

29. Section 209 should be extended to include unregistered lakherajdars and dependent taluqdars, and the modified summary sale procedure should be extended to them after they have been registered. The notice of sale should be served by the civil court in the way in which summons on defendant is served, in the presence of two substantial men of the village, one member of the panchayet, and the chowkeydar.

J. E. S.—Reg. No. 4965C—327—7-8-84.

No 118, dated Bagirhat, the 5th September 1884.

From—Baboo Jagadiswar Gupta, First Munsif of Bagirhat,

To—The Secretary to the Government of Bengal.

In compliance with the directions contained in your circular No. 9T—R of the 5th June last, I have the honour to submit the following report on the revised Bengal Tenancy Bill. I beg to submit at the outset that I am perfectly aware that on a subject like the present, in which so many eminent persons differ in opinions, my humble opinion would be entirely valueless; but as I think myself highly honoured by being invited by His Honor the Lieutenant-Governor, and as I am in duty bound to furnish such information as may be in my power, I proceed to express my views with the utmost diffidence. Here I beg to premise that my answers to the various questions raised in your circular to all Commissioners of Divisions are given in the order in which they are treated in the Bill, keeping in view the questions especially referred to me in your circular under reply, the answers to which will be found in the chapter under which they come according to the arrangement of the Bill.

CHAPTERS I and II.

The definition of ryot in section 5 (3) does not cover ryots holding under unregistered lakharajdars. For the word "proprietor," under whom he must hold, means a person owning an estate, section 3 (2), which again under its definition section 3 (1) does not include unregistered rent-free lands. By making a little addition then to the definition of estate, this defect may be cured.

The presumption provided for in section 5 (5) seems to me to be a very fair presumption.

Coming to the more important question whether the conversion of the subletting occupancy ryot into a tenure-holder (section 37) is a workable provision raised in paragraph 4 (*c*) of your circular to all Commissioners, I beg to submit that no one can doubt that the danger of occupancy rights falling largely into the hands of money-lenders and speculative land-jobbers is a serious danger. But the remedy provided for seems to be of doubtful efficacy. For the provision, as I believe, is based upon the assumption that for fear of bringing his holdings under the summary sale procedure and of allowing his subject to acquire occupancy right, an occupant ryot will be dissuaded from subletting it and a money lender from purchasing it. The fear of exposing the holding to being summarily dealt with for arrears of rent might not be a check at all; on the contrary, the inducement might be very great to raise the status from an ordinary occupancy holding into a tenure with superior rights and privileges. As to the other ground of allowing under-ryots to acquire rights of occupancy, it is very doubtful whether that would operate as a sufficient deterrent motive. For it might not be unlikely that a ryot with large occupancy holding would be glad to convert his holding into a tenure, if thereby he could raise a sufficient bonus for himself. As for the mahajans, they would be only too glad if they could purchase the converted tenure for a debt which in the generality of cases is rather imaginary than real, being swollen into a hundred-fold by the increase of various interest. These reasons together with a consideration of the practical difficulties connected with the ascertainment and registration of sub-leases raise doubts in my mind whether the provisions embodied in the section will be efficacious or not. But if the Government do not deem it wise to do away with the provision, then a penal clause for non-registration of sub-leases should be inserted.

CHAPTER III.

The provisions of this chapter may be allowed to stand as they are. To remove the difficulty in deciding what holdings are and what are not tenures, the test given, viz. the object for which the tenancy was first created, *i.e.*, whether for collecting rents or for cultivating, will afford great facilities in removing it.

CHAPTER IV.

Under this chapter my opinion is asked as to the advisability of retaining in its present form the 20 years' presumption rule embodied in section 64 (2) of the Bill. On a careful consideration of all the questions for and against the provision, I am of opinion that it should be retained in its present form. In my experience I have often observed that instead of landlords experiencing any difficulty to rebut the presumption, it was the ryots who found considerable difficulties to prove uniform payments of rents. Regarding the objection of auction-purchasers experiencing hardships in rebutting the presumption, I beg to observe that such instances rarely occur. I know of no case, although I have had to decide a great many of them, in which the ryots were found to succeed simply by pleading the presumption.

CHAPTER V

Occupancy ryots.

This is a very important chapter in the Bill. I shall endeavour to answer all the questions asked to the best of my power.

Regarding the question asked in paragraph 3 of the circular sent to me as to whether I know of any local custom which in any way recognises some right in a ryot to his holding, although he has not held it for 12 years, and so acquired a statutory right of occupancy, I beg to answer that I know of no such custom.

As to the points raised in paragraph 7 of your circular to all Commissioners, I beg to say that, taking into consideration the facts and circumstances of this locality, I do not think that any practical loss would likely result to zemindars by allowing the ryot to acquire right of occupancy in any estate as defined in the Bill. For here there are no estates of any unusual magnitude which may create any hardship to the zemindars. I do not know how the area of any entire estate can otherwise be defined for the purposes of this section without creating great practical inconvenience.

On the second point I am of opinion that estates which have been duly partitioned under the Butwara law should be the area in which the ryot should be allowed to claim right of occupancy.

Incidents of occupancy right.

Under this head the important question is that of transferability of occupancy right. In connection with this the point to be considered is whether such right can be given to the occupant ryot without placing any restrictions on his power of alienation. The fear entertained is that lest the mahajans by purchasing such rights reduce the actual cultivators to serfdom. On paying my best considerations upon this most difficult subject, I can come to no other conclusion than that such right should be conferred upon the ryot who by custom of the country even now enjoys it in many districts. The difficulty of devising a plan to put restrictions in his power is indeed insuperable. I can see no way out of it, and candidly confess that I am wholly unable to suggest anything on this point.

Restrictions on Sub-letting.

I have already expressed my opinion on this potnt; I need not enter into any discussion of it in this place.

Enhancement of Rent.

(1) *Grounds of enhancement.*

(*a*).—The most important point to be considered under this head is the first ground of enhancement, namely the prevailing rate. In my short experience of this subdivision, I have observed that enhancement of rent is invariably demanded here on this ground as well as on the ground of increase of land by actual measurement. I can confidently affirm that to prove "prevailing rates," which are properly speaking nowhere in existence in the subdivision, the landlords have had recourse to tutored evidence, and the result has been that, except by adjustment made out of court, they have never been found to succeed. In fact the prevailing rate ground seems to me to have been an unworkable provision and should be abandoned. I cannot conceive how the abolition of this ground would tell unfairly on the zemindars when they derive little practical benefit by it. On the contrary, if the other grounds of enhancement can be made smooth and workable, they will gladly forego it.

(*b*).—If authoritative price lists of staple food-crops in each district and parts of district can be prepared, then it would undoubtedly aid the courts to work out the rule embodied in the second ground of enhancement, viz., rise in the price of staple food-crops. But then it would still be open to the objections pointed out in paragraph 13 of the Supreme Government's letter. I would therefore propose that such price lists be treated only as *primâ facie* evidence of the rise, giving both sides power to rebut it, and that when rent is to be enhanced on this ground the enhancement should not be in exact proportion with the rise in prices, but that some margin should be allowed to the ryot to cover the increased costs of cultivation.

(*c*).—Regarding the third and fourth grounds of enhancement owing to the increased productiveness of the soil, I have nothing to say, except that it will be very difficult to work out the last rule, viz., when the productiveness would be caused by fluvial action. In connection with this subject, I beg to add that the scheme for registering landlords' improvements which the Bill provides would be sufficient to enhance rents on the ground of increased productiveness owing to such improvements.

The extent of enhancement.

In order to discourage litigation, enhancements made out of court should in cases of increased price or fluvial action be to the same extent as in court.

Enhancement on re-letting.

The provision of section 42 should be made applicable both to occupancy and non-occupancy ryots. I may add here that I have already advocated to abandon the prevailing rate test, and that I shall have occasion under Chapter VI to propose for the equalisation of rates of rent of both these sorts of ryots. The apprehension entertained on this subject will in my opinion be thus obviated.

BASTU OR HOMESTEAD LANDS.

In answer to the question put to me in paragraph 2 of your circular, I beg to submit that I know of no practice prevailing in my jurisdiction which exempts, under any circumstances, the *bastu land* from sale when such *bastu* is an integral portion of the holding and when the occupancy right to the arable portion of the holding is put up for sale in execution of a decree. No isolated instances of any such practice have ever come to my knowledge. After carefully considering all the points raised in paragraph 12 of your circular to all Commissioners, and after weighing the facts that have come to my experience, I have come to the conclusion that *bastu* land of occupancy ryots, whether it form an integral portion of his holding or not, should be exempted from enhancement, except on the ground of improvements being made by the landlord.

REDUCTION OF RENTS AND COMMUTATION OF RENT IN KIND.

I think the provision for reduction of rents are fair and wholesome. I have nothing to say against them as regards commutation of rent in kind. I beg to suggest only that when the average value of rent received by the landlord during the last ten years is to be made the test for commutation, some deduction should be allowed to the ryot on account of the cultivation charges.

CHAPTER VI.

NON-OCCUPANCY RYOTS.

Under this chapter what I have to submit is that the provisions therein made are in my opinion hardly to improve the status of the non-occupancy ryots. I think that they are likely to intensify the difficulties for the growth of the occupancy right which it is the policy of Government to facilitate. What I venture to suggest is that in respect of rates of rent and enhancement this class of ryots should enjoy the same privileges as the settled ryot, only that they should be liable to ejectment for non-payment of rents, &c., and should not have transferable right in their holdings.

CHAPTER VII.

UNDER-RYOTS.

From my experience and from the information gathered, I am in a position to say that the limitation imposed by section 62 on under-ryots' rents would not be effective in practice. I do not think that any limitations are desirable on such rents. Here in this subdivision there are sometimes a dozen interests under which the under-ryot holds, and still his profits are not inconsiderable. To disturb this state of things would have a serious consequence on the general administration of justice, and would open out fields for endless litigation. I would therefore propose that the rents of this class of ryots should be what may be agreed upon between himself and his landlord.

The limitation imposed by section 38 on the terms of sub-leases should not also be retained. I do not think that this would have any effect in checking the practice of sub-letting; on the contrary, in the cases of existing sub-leases expiring at the end of seven years from the commencement of this Act as provided in clause (*b*) of the section, it is likely to operate as a disturbing element to the eviction and annoyance of many poor people who would otherwise be allowed by their landlords to remain in their holdings. Thus it would open out a fresh field for harassing litigation.

CHAPTER VIII.

I have already expressed my views as to the advisability of retaining the 20 years' presumption in its present form under chapter IV. I have nothing more to say regarding the various provisions of this chapter than that I consider them to be wholesome.

CHAPTER IX.

Regarding the provision of abandonment contained in section 96, I beg to submit that I approve of the views expressed by the Honorable Mr. Reynolds in his memorandum of dissent on this subject, and suggest that the operation of the section be confined only to non-occupancy ryots. As to the other question raised under this chapter, I submit that it would not be wise to allow the zemindar to measure lakharaj lands lying within his estate I think that such a provision if retained would open the door to serious abuses.

The Civil Court Ameen at present measures lands by the standard bigha, and then converts the result to local bighas if required. I am not aware if any inconvenience has ever resulted from this practice. I therefore approve of the provision for measurement by the standard bigha provided in section 101.

As regards the provisions for appointment of managers in joint estates, I agree with the views taken by the late Honorable Kristo Das Pal in his dissent, and think that such provisions without benefiting the ryot are likely to act hardly against the co-sharers of a joint estate. For the provision made in clause (*c*) of section 73 for deposit of rent will sufficiently guard the ryot from being harassed in cases of disputes arising among the several co-sharers. I would therefore propose to abandon these sections from the Bill.

CHAPTER XI.

Notwithstanding that there might be difficulties in the way of deciding particular cases as pointed out in paragraph 22 of the Government of India's letter, I am of opinion that the table of rates when prepared will greatly aid in solving the most difficult question of enhancement.

CHAPTER XII.

In my experience I knew no other land than the land defined in section 138 (1), in which the cultivator can ordinarily acquire right of occupancy. The provisions of this chapter seem to me to be very useful and beneficial.

CHAPTER XIII.

Under this chapter the important subject of distraint is provided for. I have known in my experience that the process of distraint is seldom resorted to by landlords, except as an engine to curb the rebellious spirit of their refractory tenants. Up to this time its practical utility has been very little. The practicability of the theory that "in the case of an improvident peasantry a remedy against the crops is a more humane process than a remedy against the land" holds good in cases where the landlord from a *bonâ fide* motive of realizing his dues resorts to it. But such is seldom the case, as has been stated above. Indeed, the abuses of distraint have been very great. These considerations induce me to urge the abolition of the system altogether; but if it be not deemed wise to do so, then radical improvements should be made on the existing system. The provisions of the Bill are no doubt improvements, but more should be introduced to restrict the landlord's power to do anything in this matter independently of the court's intervention.

CHAPTER XIV.

Judicial Procedure.

By clause (*b*) to section 168 it has been provided that there shall be no appeal against decrees passed by judicial officers empowered on this behalf to try suits below Rs. 50, in which there shall be no question of title involved. Again by clause (*s*), section 163, recording evidence in full has been made compulsory. These two provisions seem to me to be somewhat inconsistent. The object for which the provision contained in section 168 has been made is, I believe, to secure a speedier and cheaper method of recovering arrears. But then if evidence has to be recorded in full, then there will be necessarily greater delay in the disposal of the suit: the Court's time will be needlessly wasted; the parties shall have to pay more to their pleaders; and not unfrequently the suit shall have to be adjourned oftener. To obviate this evil, I beg to propose that the summary procedure like that embodied in the mofussil Small Cause Court Act (XI of 1865) should be given to specially elected officers to try this class of suits. It may be apprehended that the ryot's case may not be fully heard, and that there may be failure of justice. But when the legislature has deemed it proper to confer summary powers in Small Cause Court cases without entertaining any such apprehension, I do not think that it would be proper to do so in this instance, especially when provision has been made in the section for motion to the District Judge.

The provision made in section 164 does not seem to me to be of any practical value, or to fulfil the purpose for which it has been made. For it does not reach the cases, which are by far of most common occurrence in this connection, viz., the cases in which a defendant while admitting a third party to be his landlord pleads payment and satisfaction to that party, and files discharges supposed to be granted by him. Experience has shown that whenever such defence is set up the ryot remains in collusion with the latter, and instead of admitting his debt pleads payment. In such cases the section will be of little benefit.

In the cases referred to in the last paragraph, the court determines whether defendant is plaintiff's ryot; if it find the issue in the affirmative, then it would award a decree against the defendant, notwithstanding he might have paid his rent to the third party. For if he were fool enough to pay his rent to a party not entitled to it, he should be blamed for it. This method seems to me to be not only fair and equitable, but far more simple than the complicated one embodied in the Bill. I would therefore respectfully ask to expunge it.

The proposal put forward by the zemindars that a landlord may be permitted to institute a collective suit against a number of ryots should in my opinion never be accepted. For instead of saving labour of the Court, it will upon the appearance of defendants make the cases a hundredfold complicated.

The summary sale procedure for realization of rents should not be made applicable to the recovery of road and public work cesses for rent-free tenures. They should be realised, as at present, in the same way as arrears of rent.

With these modifications I fully approve of the rules of procedure prescribed in this chapter.

CHAPTERS XV and XVI.

The provisions embodied in sections 175 to 177 and the other provision of chapter XV seem to me beneficial and wise; chapter XVI is a reproduction of the present putni law. I have nothing to submit regarding these chapters.

CHAPTER XVII.

Taking into consideration the general conditions of the ryots as a class, and carefully examining the provision of section 210, I agree that freedom of contract should be barred in all the cases specified.

I have nothing more to say, except a few words on the question No. 6 raised in the initial paragraph of the Government of India's letter, viz., "whether it would be possible to specify for the purpose of exemption from the pre-emption sections any such transferable occupancy rights as these in *Gusaruts* and Gora holdings? I have no experience of any other semi-tenures of this nature, except the howlahs and nim howlahs, &c., which are in existence within my jurisdiction. Regarding them I beg to submit that they have been transferable by custom of the country from generations, and should be exempted from the pre-emption clauses of the Bill Section 217 saves custom in a general way. If no provisions to the effect be especially specified, then doubts may arise as to the application of the section to these tenures, and thus open out wide fields for contentions. I therefore humbly propose to enumerate all such tenures in a tabular form in the Bill for the purpose of exclusion from pre-emption. As far as the howlahs and nim howlahs of this place are concerned, they are neither so numerous nor ill-defined as to elude classification.

In conclusion, I beg most respectfully to state that I have avoided to answer questions which do not come within the sphere of my duties, but which can be best answered by the local executive officers, and that I have refrained from touching subjects on which I could form no opinion. I beg to add that although I have striven to perform the duties imposed upon me to the best of my power and ability, still my success has been but little. For I am conscious that I was quite unequal to cope with the task. But considering the vital importance of the subject, and considering that the little experience I have gathered in the discharge of my judicial works might be of some use towards the solution of this most difficult problem, I have ventured to express in the foregoing lines, though poorly clad, what I thought just and proper. I cannot conclude my remarks without expressing deep regret for not having been able to submit my report within the time prescribed to me.

A E D'S.—Reg No 6527C—327—8-9-84.

Dated Tangail, the 28th July 1884.

From—Baboo Khetter Prasad Mookerjee, First Munsif of Atia, Mymensingh,
To—The Secretary to the Government of Bengal, Revenue Department.

I have the honour to acknowledge the receipt of the Government circular No. 9T.—R, dated Darjeeling, the 5th June 1884, with annexures, calling for an expression of my opinion on the questions raised therein in connection with the Revised Tenancy Bill, except those referred to in chapter X of the Bill and in paragraph 4 of the Government of India's letter; and in reply I beg to offer the following suggestions in accordance with the view I take on the said questions.

MEMORANDUM.

CHAPTER II.

1. It seems to me that the definition of raiyat given in section 5 (3) does not cover all classes of raiyats. It does not include those holding under unregistered lakhirajdars. Unregistered rent-free lands do not come within the definition of "estate" in section 3 (1). The owners of such lands do not, therefore, come under the category of 'proprietors' as defined in the Bill. The definition of the latter term should therefore be amended so as to include unregistered lakhirajdars, who are as much entitled to be called proprietors as owners of estates.

2. The presumption in section 5 (5) is, in my opinion, a fair presumption, with reference to existing practice. With the exception of ryots holding *chur* lands in Government khas mehals, whose holdings in some cases comprise more than 100 bigahs, most of the raiyati holdings in Bengal comprise less than 100 bigahs. There are no doubt jotes in Rungpore and tenures in Backergunge which comprise more than that area. But local custom has already recognised such holdings as tenures of transferable character.

3. This question runs thus:—'Whether the conversion of the sub-letting occupancy raiyat into a tenure-holder (section 37) is a workable provision, and also likely to secure the objects for which it was devised.' This question does not admit of an easy answer. After having carefully considered this subject, I can come to no other conclusion than that this provision won't work if other provisions of the Bill, such as sections 56 and 42, which give undue facilities for rack-renting be retained, and unless stringent provisions be made in the Bill for enforcing compulsory registration of sub-leases covering in the aggregate half the area. The land-owners are opposed to the elimination or amendment of section 56 of the Bill, on the ground that, since the legislation of 1859, for about quarter of a century non-occupancy raiyats have invariably been treated as having no right to hold the land, unless he can come to terms with his landlord as to the rent payable for the same. The landlords would therefore look upon any amendment of section 56 as an infringement of their rights. I also think there are other considerations tending to the same conclusion. Recognition of the principle of equality between the maximum occupancy and non-occupancy rates of rent would, in my opinion, diminish the value of the security which the borrowing cultivator has to offer to his banker. Let me put the case thus: A, an occupancy raiyat of land, paying rent at the rate of Rs. 2 per bigah, sells the land to a banker for Rs. 100. The banker, not being an actual cultivator himself, is obliged to sub-let the whole of it, and is thus converted into a tenure-holder If he be not allowed to take from the sub-lessee so much rent as will cover interest on the capital sunk in buying out the out-going tenant, it will be very hard. It is a fact which admits of no question that the less valuable the security which the borrower has to offer to his banker, the more stringent will be the terms imposed upon him. The poorer cultivators, who cannot for a moment live independently of the banker, will in that case eventually be the sufferers.

I have no doubt that the equalisation of occupancy and non-occupancy rates of rent will impose an efficient check on the power of mahajan-purchasers to rack-rent their under-tenants. But then, I beg to submit, will it be fair to the persons who have embarked their capital in the purchase of land; and will it not injure the poorer cultivators, on whom more stringent terms as to rate of interest, &c., &c, will be imposed by the mahajan?

The wealthier cultivators in East Bengal have very little to fear. They are, I believe, independent of the mahajan. The soil is fertile and grows jute, a valuable crop. The lot of the poorer cultivators everywhere is exceptionally hard. For such men no exceptional legislation is, in my opinion, needed. The future of this class may safely be left to economic laws. The raiyats of lands within my jurisdiction are generally at present too ignorant. Lately I had a talk with some of them. They seemed to understand very little the meaning of tenant right or appreciate its value. Such men can easily be got into the clutches of the money-lender or the rapacious land agents. Time, patience, and the rise of prices as affected by situation and the opening of railways or roads to better markets, coupled with letting in the day light of education will, I believe, make the cultivators more and more independent of the mahajan. Mr. Caird, at page 181 of his recently published interesting work on India—the land and the people—says thus about the cultivators of Eygpt:—"It was authoritatively stated in the House of Commons, eighteen months ago, that the extortionate demands for interest to which the land-holders had previously been exposed had been superseded by Crédit Foncier, under which they were provided with funds on reasonable terms, and that great

advantage and comparative prosperity had been the result." I am for trying a similar experiment in Bengal to make the cultivator independent of the mahajan. When, under the circumstances stated above, the cultivator becomes independent of the banker, there will then be no necessity for such safeguards against the intrusion of the money-lender as is proposed to be provided by section 37 of the Bill.

As to the difficulty of registration of sub-leases covering in the aggregate half the area, I have to observe that stringent provisions should be enacted for compelling registration. In any suit for rent between the sub-lessor and sub-lessee, if it comes out that more than half the area has been sub-let, and that the sub-lease is unregistered, it should be provided that his suit must be dismissed with costs. Again, in a suit by the sub-lessor not belonging to the class of actual cultivators, it should be presumed that more than half the area has been sub-let until the contrary is proved. The imposition of some such penalties is, I believe, necessary to compel registration.

As to the difficulty of determining whether the tenant is a tenure-holder or ryot, I have to observe that, even excluding from consideration the novel provision alluded to in sub-clause (*b*), clause 4, section 5, it is not always easy to determine this question. It will be very difficult to prove local custom, and lots of false evidence will be got up on both sides in suits for the purpose of proving or disproving it. Again, in cases of tenancies of long standing it will be difficult to determine the nature of the right of tenancy as originally acquired. In cases of holdings of long standing, say 20 or 25 years old, it will be very difficult to find evidence to prove the nature of the right of tenancy acquired so long ago. I have already said what I have to say as to sub-clause (*b*), clause 4, section 5. I shall have to say something about it more hereafter.

CHAPTER III.

On comparing the provisions of sections 8 and 10 with the analogous provisions about occupancy raiyats contained in sections 45 to 50 of the Bill, it appears to me that the occupancy raiyat enjoys certain advantages not conceded to the tenure-holders in these respects. I therefore suggest that either the tenure-holder should be placed on the same footing in these respects with the occupancy ryot, or that clause (*b*), section 37, should be expunged in order to render the provision contained in section 37 more workable.

No cases of enhancement of tenure-holders' rents ever came before me for trial, as far as I remember. I am, therefore, unable to test the practicability or workable character of the provisions in this chapter.

CHAPTER IV.

I am in favour of the retention in its present form of the 20 years' presumption rule, embodied in section 64 (2) of the Bill. If a zemindar has not from mere dislike of litigation enhanced the rent of his raiyat for 20 years, the burden of proof which the section throws on him will be easy to discharge. No doubt in cases of purchasers at revenue sales the presumption does work hard and stand in their way to enhancement; but taking all things into consideration, it is essentially necessary that the presumption should be retained. Auction-purchasers have in all cases to meet with difficulty in proving their cases, but on that account there can be no special rule or law of evidence in their favour. They do take these risks into account when they bid for a property, and if they will exercise a little prudence, they will not be losers. The remarks of the Hon'ble Kristo Das Pal in his dissent have no force whatever for reasons set forth above.

CHAPTER V.

In my opinion, the word 'estate' in the definition of 'settled raiyat' ought to be expunged. The insertion of this term in the definition would work very hard upon the zemindars. An estate may extend over hundreds of miles over different districts. If this term be at all retained, then I would suggest that the portion of the estate where it extends over a large tract of country should be limited to the sub-division of a district, and that the estate should be of the extent it was 30 years ago.

The presumption in clause (2), section 26 of the Bill is, in my opinion, a fair presumption with reference to the existing state of things. About 90 per cent. of the raiyats of Bengal have occupancy rights. As leases and agreements between landlords and tenants are now duly registered, practically the zemindar will have no difficulty in rebutting it.

There is nothing objectionable in section 29 (1). It is only fair and just that the mere fact of a purchaser of rights of occupancy being a fractional sharer in the superior zemindari should not prevent him from acquiring rights which any other person could acquire. The case is different with regard to the holder of the entire estate.

As to the incidents of the occupancy right, I think it fit to quote the following remarkable passage at pages 112 and 113 of Mr. Caird's interesting book on 'India : its land and the people' :—" The land of East Bengal is held under the Permanent Settlement, and as the Government has no immediate interest in the question of rent, the landlords and their tenants fight that out with the help of the Courts of Law, the tenants making up a common purse for the purpose. The laws' delay, and the difficulty of dealing with large numbers of small tenants, enable these to get the upper hand by uniting against enhancement of rents, and even against any rent, as the landlord is called on by the Courts to show by his books that he has received the precise rent for five years back; otherwise they will not

grant him a decree. A large land-owner complained to Mr. Caird that from three of his estates, with hundreds of small occupiers, he is unable to get any rent, as in each single case he is compelled to sue ; and it has become a question whether it will pay to do so. The circumstances here are the reverse of what Mr. Caird found them in the North-West Provinces. There the Government interfered to protect the cultivator from the landlord by giving him 'occupancy rights,' which, being transferable, were quickly pawned by the poor man to the money-lender. Here the cultivators, being near good markets, have become so independent that the landlord asks for Government assistance against them. Their united action in withholding rent is a serious matter, especially to the small land-owners, who are entirely dependent on the rent for their living.

The lesson to be drawn from these opposite results would seem to be that the less the Government and the courts of law interfere in the relation between landlord and tenant, the more likely are they to be satisfactorily arranged by the mutual interests of the parties." The state of things disclosed in this passage is but too true. I am therefore of opinion that there is no harm in giving transferable occupancy rights to the well-to-do cultivators of East Bengal, who are so independent of the mahajan. But the lot of their poorer and less fortunate brethern here and elsewhere is exceptionally hard, as they cannot do without the mahajan. In the case of these poor cultivators my firm conviction is that it is not at all safe in their present state of dependence on the money-lender to give them transferable rights of occupancy. I would in their case leave the law as it is. At present a custom has grown up in several parts of the country of selling occupancy holdings either voluntarily or in execution of decrees. Except in cases where the holdings are sold for their own arrears the landlord has the right of veto on the incoming tenant. The existence of this right, which has been found necessary to enable the landlord to get rid of bad tenants, affects most prejudicially the value of the holding, and in consequence the value of the security which the borrowing cultivator has to offer to his banker, which necessitates the imposition of very stringent terms by the latter upon the former. Giving transferable rights will no doubt enhance the value of the holding. I know of some instances in which big-sized occupancy holdings have been put up and sold at almost nominal prices. But while transferability enhances the value of the holding, it has the *mischievous* tendency of introducing or multiplying middlemen who will rack-rent their undertenants. It will not do to expunge or amend section 56 of the Bill. It is but fair that the persons who have embarked their capital in the purchase of land should get from their undertenants more rent than they have themselves to pay to their landlord. This increase of rent will represent interest on the capital sunk in buying out the outgoing tenant.

On the other hand, if section 56 of the Bill be retained as it stands, it will gratify most mischievously the rack-renting proclivities of the landlord or the mahajan middlemen. It is most difficult to devise a feasible plan for restricting purchases of occupancy holdings to the cultivating classes only. If Government can manage any how to render the poor cultivators independent of the mahajan by the institution of agricultural banks for advancing money to the cultivator on reasonable terms, the case would be otherwise. But in the present state of things I see no way of making both ends meet except by keeping the law on this point as it is. It is desirable, however, to have it declared that occupancy holdings shall be saleable for their own arrears of rent under decrees of court in substitution for the system of ejectment recognised by the existing law.

As to clause (*b*), section 31, of the Bill, I have to observe that by the Hindoo law of sub-division among male children, an estate of 100 acres held by one man may be reduced in three generations to holdings of three-fourths of an acre each. This is also the tendency of the Mahomedan law of inheritance. This circumstance, taken together with the home-keeping proclivities of the people, will carry sub-division to such an extent as to become a serious evil. Bad or slovenly farming, which in England entails forfeiture, will be the inevitable outcome of such a state of things. I am opposed to the extension of occupancy rights on this ground also.

On the subject of enhancement, my opinion is that enhancement of rent is an idea repugnant to the notions of land tenure in this country and to the history of rent legislation. Act X of 1859 for the first time legalized enhancement, and I venture to think that in so far as it did so, it was a piece of legislation *ultra vires*. The ryots are liable to pay no rent in excess of the pergunnah rates of 1793, plus the abwabs of that year. That is a proposition capable of being borne out by testimony of the amplest and most conclusive character, but to which it is inconvenient for obvious reasons here to refer. The ryots should have had by this time a fixed rent—a fair rent incapable of enhancement—the pergunnah rates of 1793, plus the abwabs. However, the mistake has once been made, but that is no reason why it should be repeated. If a rate of rent could not be fixed in 1793, let it be fixed now. Let a fair rate be determined by Government, arbitrarily if need be; only let it be permanent and uniform. I strenuously object to section 41, clause (1), and to section 42, clause (1). To allow the rent of an occupancy ryot to be enhanced by registered contract would be to afford him no protection at all. Freedom of contract is legitimate and desirable, but there are rights of an inalienable and indefeasible charactar which no man ought to have freedom to barter away. A passage in paragraph 10 of the circular to the Commissioners is to the effect that "enhancements by private contract have frequently been obtained out of court of such a character as to preclude the belief that the ryots either were free agents or knew what they were doing in agreeing to them." When such is the case, it would not be at all safe to allow rent to be enhanced

by registered contract. Government ought to afford protection to the ryot in spite of himself. A perpetually-recurring liability to enhancement would destroy all sense of security, and take away from the ryot every incentive to exertion and all motives to improve the quality of the soil. As I have said already, the Government is at liberty to fix a particular rate as the maximum rate, and no enhancement shall be allowed to extend beyond that rate. It seems to me that one-fifth of the gross produce would be a very fair maximum rate, whether in enhancements under contract or enhancements by suit: the maximum rate one-fifth of the gross produce is the limit which never ought to be exceeded. If enhancement is to be allowed at all, I would suggest that the first ground of enhancement in section 43, namely "the prevailing rate," should be eliminated from the Bill. I fully agree in the reasons set forth by Mr. Reynolds in his dissent objecting to the retention of the prevailing rate as a ground of enhancement. The dangerous tendency of sections 56, 60, 41, and 42 of the Bill, and certain other sections of it, is to gradually increase the prevailing rate, and the only efficient check, the gross produce tests, has been abandoned for reasons in which I do not at all concur. I am therefore for eliminating this ground of enhancement from the Bill. I also see no reason why the ground of enhancement, if the land be found on measurement to be larger than was supposed, has been omitted in the present Bill. Increase of area has been recognised as a ground of enhancement from time immemorial. I am of opinion that this ground should be included among the grounds of enhancement, if enhancement is to be allowed at all.

Bastu question.—The rent payable for *bastu* lands ought under no circumstances to be enhanced, and ought never to be higher than double the rent of agricultural land.

I am not aware of the existence of any custom whereby a ryot who is ejected from or who otherwise parts with his holding is entitled to retain possession of his homestead lands, nor have any isolated instances of such practice ever occurred within my experience. It was, I am informed, the former practice. It is not the custom now. In my opinion this custom should now be revived, for nothing operates so harshly upon the cultivator as the being turned out of his humble cottage—the home of his fathers.

Chapter VI.—The chapter should, in my opinion, be remodelled on a sounder basis. The initial rent of a non-occupancy ryot should never be allowed to exceed a certain limit to be fixed by law. Allowing section 56 to stand as it is would be fraught with serious danger. Let a reasonable maximum limit be fixed beyond which the rent of a non-occupancy ryot should never be allowed to go, and let that limit remain in force for a certain number of years—10 or 15 years—just on the analogy of similar provisions in the Irish Land Act of 1881. A certain portion of the gross produce should be fixed as the maximum rate.

Question of abandonment.—The provisions of section 96 of the Bill are calculated to promote the exercise of arbitrary power on the part of landlords. For reasons set forth in the last paragraph of Mr. Reynolds' dissent, I am of opinion that this section should apply only to non-occupancy ryots. The landlord should wait a reasonable time after the end of the agricultural year in which the abandonment takes place before he is entitled to re-enter or treat the holding as khas. This reasonable time should be at least three months, on expiry of which, if the ryot does dot come back, the landlord should publish notices, one being stuck up on the land deserted, and the other at his mal cutchery, and wait three months more. If the ryot fails to come back within that period, the landlord can safely re-enter.

Additional suggestions.—The non-occupancy ryot should have the right of constructing a well and also of making such excavations in the ground as are necessary for the construction of dwelling-houses. The landlords usually do not allow the ryots to make any excavations in the ground. It is necessary therefore that there should be specific provisions in the Bill enabling ryots to make all excavations which are necessary for the construction of dwelling-houses and for comfortable living therein

I fully admit the landlord's right to measure all lands within his estate, but the right ought not to exist in respect of *mukurrary maurusi* lands, the boundaries of which are specified in the lease.

Distraint.—Distraint ought to be exercised through courts of law in the way prescribed by the Bill. With regard to the provisions of section 210 regarding freedom of contract, it is necessary to add that no contract shall take away the right of the ryot to get the produce of trees which he or his ancestors may have planted on the land he holds, for he has an indefeasible right to get the *awlat*, as it is called.

In the circular No. 9T—R under reply, a question has been raised whether local custom recognises some right in a ryot, although he has held the land less than 12 years. In reply to my enquiries, respectable pleaders of my court inform me, and I have reason to believe the information to be correct, that non-occupancy holdings are often put up for sale in the courts here in execution of decrees. The decree-holders in their lists of attached holdings simply state them as ordinary ryoti jotes without any specification of the character of the holding, or the period for which it has been in existence. This omission is, I believe, due to the difficulty felt by money decree-holders in ascertaining the exact date of creation of the attached holdings. I have reason to believe, on information received from the pleaders, that non-occupancy holdings of less than 12 years' standing are often put up and sold in execution of decrees.

Under the existing law the purchaser of a non-occupancy holding is in no worse position than the purchaser of occupancy holdings. In either case the landlord has the right of veto on the incoming tenant, and the purchaser has to obtain the landlord's

recognition of the transfer, often at a heavy cost, before he can call his purchase his own. I am aware of the existence of no other local custom than the one above alluded to.

CHAPTER XIV.

I have read the procedure sections of the Bill most carefully. I find that the scheme drawn up in this chapter is the best that could be devised The Hon'ble High Court is empowered by the Bill to make such alterations and modifications in the procedure from time to time as it may deem necessary, and this provision is quite sufficient to make the scheme gradually more and more complete in itself. Any provisions that may have now been passed over from oversight may afterwards be introduced under the power vested in the High Court.

I conclude this report with the following suggestions :—

The present bitterness of feeling between the landlords and tenants in several parts of Bengal is certainly most deplorable. This is due, I believe, to the following causes. There is no sense of security in the cultivating peasantry. They cannot have any peace of mind so long as the perpetually-recurring liability to enhancement—this Damocle's sword—is hanging over their heads. From the days of Manu downwards the ruling power is entitled to a certain proportion of the produce of every bigha of land (demandable in money or kind according to local custom).

This right of the sovereign has been transferred to the landowners of Bengal under the permanent settlement—*vide* paragraph 1, preamble to Regulation XIX of 1793. The entire law of enhancement in Bengal ought, in my opinion, to be remodelled on this principle. The landlords have no right to anything in excess of the sovereign's share of the produce. The novel ground of enhancement on account of rise of prices introduced in the Bill is tenable only on the principle laid down in the preamble quoted above. Suppose the value of the produce per bigha is to-day Rs. 20. The landlord should get Rs 4 out of it, and the remaining Rs 16 will include the cost of production and the margin left for the support of the ryot and his family. Suppose the value of the produce 10 years hence becomes Rs. 30. The landlord will get a proportionate share in the increase. He will get one-fifth of Rs. 30, or Rs. 6, or an increase of Rs 2 only, and nothing more. Any law which allows the landlord to get more than he is fairly entitled to on this principle will authorise an encroachment on the tenant's share in the remaining four-fifths. This encroachment on the tenant's right has been one among many sources of the present bitterness of feeling between the parties to this great controversy. Again, there is another reason why no undue facilities should be given to the landlords for enhancing the rents of their ryots. I beg to draw your attention to the article on the peasantry of India in the *London Statesman* of September 1880, which discloses a sad state of things, and gives a graphic picture of the wretchedness of the agricultural population. Mr. Knight concludes this article with the following remarks :—

"Under British rule the soil of India is fast passing into the power of land speculators and money-lenders, while the ancient landowners have been converted into half-starved serfs on the fields which were once their own." Mr. Knight clearly shews in this article from quotations from official reports that "the system of illegal cesses has eaten, like an incurable disease, into the social organization of the country. An energetic Government might have grappled with the question and succeeded in abolishing a system which, though forbidden by law, yet flourishes in undisturbed luxuriance"

The question has become a most serious one. Already agrarian strikes exist in some parts of this district. Both parties are anxiously watching with intense interest the progress that is being made towards final and permanent settlement of this much-vexed rent question. I hope and trust that no delay, further than is unavoidable, may be made in arriving at the settlement which is indispensably necessary for the restoration of that peace and order which are at present in some parts of the district sadly wanted.

This report has been drawn up in a hurry. I have had no time to comment on the details.

KHETTER PROSAD MOOKERJEE,

1st Munsif, Atia, Mymensingh.

W. J. & J. E. S —Reg No. 4795C—315—1-8-84.

No. 47, dated Noakholly, the 28th July 1884.

From—Baboo Chandra Kumar Roy, M.A., B.L., First Munsif of Shadharam (Noakholly),

To—The Secretary to the Government of Bengal, Revenue Department.

In compliance with the requisition made by the Government circular No. 9T.R., dated Darjeeling, the 5th ultimo, I beg most respectfully to submit my humble opinion on the questions raised by Government in its circular letter No. 3T.R. of the 24th May last in the annexed notes on the various sections of the revised Bengal Tenancy Bill.

2. In reply to paragraph 2 of the circular, I beg to state that no such practice of exempting *bastu* land from sale in execution of decree obtains in these districts. The other questions regarding *bastu* lands are discussed in connection with the remarks made on the definition of *settled raiyat* in the notes on Chapter V.

3. The question in paragraph 3 is also replied there. I beg only to add that a raiyat with homestead included in his holding, *i.e.*, what may be called a resident raiyat, receives better and more lenient consideration from the landlord than even the statutory occupancy raiyats created by Act X of 1859. He holds transferable and heriditary right on a lower rate of rent and is never sued for ejectment.

4. In addition to the above, I beg further to submit the following suggestions respecting distraint, summary sale, and general procedure to be adopted in rent suits.

(*a*) If the main object of the Government be to grant facility to the landlords in recovering their dues, and at the same time to protect the tenants from oppression by any abuse of authority granted for that purpose, the first thing to be done is to discourage as much as possible litigation, which has become ruinous to all classes in consequence of their heavy expenses and delay. This result can only be procured by devising summary methods for realization of rent.

The process of *distraint*, with slight modifications, suggested in the notes on Chapter XIII, may be limited to temporary and non-transferable holdings only.

The transferable ones, without any distinction, should be subjected to the operations of summary sales (Chapter XVI, modified also as suggested in the annexed notes) at least three, if not more times a year.

The place of sale in cases of smaller holdings, say with rent below Rs. 100 a year, may be transferred to Courts nearer the homes of the tenants than the Collector's office at the head-quarter. Where sub-divisional system has not been fully developed, Munsifs' Courts will be the proper places for this purpose. These officers should be authorized to receive application, and hold the sales either as such or as deputies of the Collector, duly empowered in that behalf. It will not increase the works of the Munsifs, as it is certain to reduce the number of suits for arrears of rent.

(*b*) The procedure suggested in Chapter XIV, save the provisions of section 168, will not, to any perceptible extent, shorten the duration of, or lessen the expense and troubles in, the prosecutions of rent suits. No procedure simpler than what is now adopted in *ex parte* and uncontested cases can be suggested. The suggestion of allowing the landlords to join several tenants of different holdings in one plaint will prove a source of inconvenience, if some of the defendants choose to contest the claim on various grounds. The landlords even now get some benefit of such a joint plaint where it is possible, as in undefended and analogous suits which rest upon the same or similar evidence. They are generally tried and disposed of together, if it so suits the convenience of the parties.

The summary procedure now adopted in petty money suits in Courts invested with powers of Small Cause Court under Civil Court Act may help us in ensuring despatch in the disposal of petty rent suits. I am not for adoption of any summary procedure in suits involving questions of title, enhancement, abatement, and ejectment.

(*c*) It is not so much, however, the delay in obtaining decrees, as that in procuring their due execution, which retards and troubles the landlords in recovering their dues. What the landlords ask to do in the plaint may, with no real grievance to complain of, be allowed to be done in applications for execution of decrees. A landlord holding several decrees against tenants of various holdings may be authorized to join as many of them in a single application for execution as will permit the Court to issue processes at the same time through same or same set of its officers. Special provisions for issuing such processes at a reduced rate of court-fees may even now be made, without any alteration of the present Court Fee Act, merely by some changes in the rules framed by the High Court. Such provisions, though at first sight may appear as concessions to the zemindars only, will in the long run be advantageous to the tenants also. They will, I hope, then prove more punctual in paying rent in fear of summary measures, and shall keep their holdings unburdened with debts and free from encumbrances of any sort.

5. The points on which Chittagong Division will require special law or exemptions from it are noticed in the notes.

NOTES.

CHAPTER I.

PRELIMINARY.

Section 3 (5).—*Rent* as it is defined here will include all *abwabs* or *illegal cesses* prohibited by section 85, if they have been made payable by the terms of the lease under different appellations, for then they will become what is "payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant."

Section 3(12).—The custom of not putting marks with the executant's own hand still prevails, at least in this division, when the executant of a document is illiterate. He directs a literate man to write his name, showing his assent sometimes by touching the pen. The latter puts his own name at the same time below the executant's name, written by him, with the word *bakalam* (through the pen of) prefixed to it. This definition will not include such documents among deeds "signed" by the executants.

CHAPTER II.

CLASSES OF TENANTS.

The definition, or rather the description of "tenure-holder" and "raiyat," given in section 5, will, I fear, rather tend to increase than diminish the difficulties in ascertaining what holdings are tenures and what are not. The Select Committee, it seems, was aware of this, and therefore left the question to be determined by local custom (section 5(4) *a*). This custom will not be uniform. In this division particularly *talukdars*, *hawladars*, *etmamdars*, and others are by custom held to be tenure-holders, though they themselves cultivate whole or a part of the lands of their holdings. Sometimes lands are leased to them with the express purpose of being cultivated with their own hands or by hired labour. Most of these tenures are even now subjected to summary sale under Regulation VIII of 1819 by special provisions in the lease. Hence the primary test proposed for distinguishing a tenure from a ryoti holding, viz. whether the holding was acquired for the purpose of cultivating the land, or for collecting rent, will not hold good here. On the other hand, the practice of sub-letting sometimes permanently by ryati has also come into vogue in this division.

The principal divisions of actual occupiers of soil in the Chittagong Division, if not all over Bengal, are not as given in section 4, viz. raiyat, under-raiyat, raiyat with fixed rates, occupancy raiyats, and non-occupancy raiyat, but are (1) raiyat, (2) dar or osat raiyat, and (3) jotedar. The farmer (raiyat) always means that he dwells on the land, which is either wholly or partially occupied by his homestead. Such a holding is generally considered to be permanent and saleable, except when the landlord supplies the raiyat with houses for his accommodation at his own expense. When such a holding is held under a raiyat, it is called dar or *osat* raiyati.

The *jotedars* or *chashas* do not reside on the lands of their holdings, but cultivate them. They may be divided into two classes, viz. those who by the operation of Acts X of 1859 and VIII of 1869 have acquired right of occupancy, which in most cases is sold in execution of decree, and those who have not acquired such right, being either tenants-at-will or for a definite term. Such being the existing state of things, it is easily imaginable what changes the sections 4 and 5 will introduce in them. The difficulties suggested in section 6 of the India Government letter will very probably counteract the efficacy of the remedy suggested in section 37. The definition of raiyat in section 5 (3) does not seem to include the raiyat of the Government khas mehals, unless the latter are "estates" within section 3 (1), which appears doubtful.

The presumption in section 5 (5) has no foundation in the existing practice. I doubt whether there is so large a raiyati holding in this division as to include 100 bigahs. No presumption on the extent of area can be laid down here. When a question arises as to the nature of the holding, it must in each case be determined, as it is now done, on its own merit with reference to the various circumstances connected with it.

CHAPTER III.

TENURE-HOLDERS.

Section 7 (1).—The question of "customary" rate will again be a stumbling block in such suits. It may be changed for "*prevailing rate.*"

Section 7 (3).—The limit of 10 per cent. of the balance will be too small for the taluqdars of the Chittagong Division, who now in most cases enjoy more than 50 or 60 per cent. To make any allowance for the risk of collection (section 7 (3) (*e*)) is what is not allowed to the zemindars, who are charged with the duties of collecting road and public works cesses. The word "risk" may be omitted.

Section 8.—This section will induce the tenure-holders who have been holding under no registered lease to understate their former jumma, so that any determination by the Court may not materially affect their real rent. I speak from experience that, even in this very

chowki, in numerous suits when landlords had no written contracts to rely upon, and even when they produced their jama-wasil-baki, talab-baki, or other like papers to prove the amount of annual rent, the tenants stated their jumma to be much below the actual amount hitherto paid by them The poorer and weaker land-holders, who, either from neglect or inability, keep no regular collection papers, suffer in such cases. They fail generally to prove the actual jumma, and are obliged to accept the amount dictated by the tenants. If any tenant unscrupulously choose so to understate the jumma that the amount stated by him be less than half of the actual jumma, and his landlords fail to prove otherwise, the enhanced jumma will never exceed the real rent paid by him. In order to avoid such contingencies, a provision should be added to section 8 to the effect that the enhanced rent shall not be more than double of the rent previously paid, if the latter be determined by unquestionable evidence only.

Section 10.—This restriction should not be extended to enhancement on the ground of increase in area, nor to override written contracts between the parties.

Section 14(1).—The amount of security should be equal to a year's rent, and not half-year's.

CHAPTER V.

The distinction that is made here between raiyat holding at a fixed rate and the occupancy raiyat, in my humble opinion, should not exist. Every raiyat will be induced to claim for himself the right of holding at a fixed rent, as it is now done in enhancement suits. The presumption of 20 years in section 64 (2) should now be done away with or limited to the date of passing Act X of 1859, which first created it. I very much doubt whether in the Chittagong Division there is a single tenant who has been really holding at a fixed rate from the date of Permanent Settlement. This presumption has really been creating a class of raiyats with privileges which they were in reality not entitled to. As the law now stands, the question whether the raiyat has been holding at a fixed rate arise in enhancement suits only. Most of these fail in preliminary ground *i.e.*, the failure to prove legal service of notice. In a very limited number of cases, therefore, the issue about the fixed rate is judicially determined. But owing to the alteration which this Bill suggests, giving some special privileges to such raiyats over the occupancy raiyats, the question of fixed rent will arise at every step the zemindar or tenant will take in settlement of their affairs in or out of Court, and will in consequence flood the Courts with litigation. This chapter really confers on such raiyats the privileges which they never enjoyed, nor expected to enjoy. It would much lessen the difficulty if the Select Committee had accepted the suggestion of the minority, and made a distinction between raiyats holding at fixed rent under written documents and others depending upon 20 years' presumption only. The presumption, being cumulative, will, with progress of time, throw difficulty in the way of the zemindars: more so because the present Bill does not make interchange of leases compulsory at the commencement of a tenancy. The 20 years may be limited, as I remarked above, to the period elapsing before the introduction of the presumption by Act X of 1859, or at any rate Act VIII (B.C.) of 1869, which retained it.

CHAPTER V.

Occupancy Ryots.

Section 26.—The definition of "settled raiyat" will revolutionize the peasant proprietorship prevailing in the Chittagong Division. In the district of Chittagong most of the estates extend over a number of villages, and not unoften over several thanas. Every village, again, comprises patches of land of several estates. Thus every cultivator in Chittagong district, who merely kept up cultivation for 12 years, though he may not have tilled a single piece of land for two consecutive years, will acquire right of occupancy nearly all over the district; for he will acquire this right in every estate that lies within his village, and again in every village to which these estates extend. The people here have always been regarding the right of the resident raiyat as superior to that of the ordinary cultivators The word raiyat, in its ordinary acceptance here, implies that he has his homestead in his holding, otherwise he is ordinarily styled a *jotedar* or a *chaska*. The title of the former is considered always transferable, with the consent of the landlord, while that of the latter is not under any circumstances, except where he has acquired the right of occupancy. But this definition is no more open to general discussion. The Government only askes whether the right should be limited by area and time. For such a district as Chittagong specially, a change of conjunction "or" into "and" will at once confine the right within so much only of the estate under which the settled ryot holds as will lie within the village, and will not permit him to acquire the right in other estates, though portions of them may lie in the same village, nor in such lands of the same estate as will be lying in other villages. The date in 27 (6) may be brought down to 12 instead of 30 years before the passing of this Bill.

The presumption in section 26 (2) will also operate injuriously to the petty zemindars of these districts, where raiyats are generally stronger than themselves.

Bastu lands.

The above remarks on the definition of the settled *raiyat* lead to the consideration of the question raised in the Government letter, paragraph, 12 about the *bastu* lands

or village sites. The rate of rent of the homestead land varies very much in Chittagong. It is in some places higher and in others lower than that of the adjoining arable lands. In Noakholly the orchards of cocoanut and betelnut trees raise the value of the homestead much higher than the paddy-fields. When it forms an integral part of a holding, it is held on the same condition as other lands in it. Such holdings are generally more highly priced than others of their kinds. Such tenures, whether taluqi or raiyati, are of permanent nature. Raiyats are also sometimes allowed to settle upon bastu lands in houses, &c, made for them by landlords on service tenures, or on other special conditions. They continue on the land so long as they make no breach of these conditions. Such tenures are not transferable. No custom of permitting raiyat to hold his homestead, when he is ejected from his holding or has transferred it, obtains in these districts. Nor is homestead exempted from sale in execution of decree when the entire holding is brought to sale. Solitary instances, however, now and then come to notice in which the tenant, having sold his tenure to a third party, holds his homestead, and sometimes with a little land adjoining to it, as an under-tenant of the purchaser.

Section 32 (2).—The provisions of these sub-sections will cause inconvenient delay and troubles to the raiyats in selling their holdings. They will be wholly helpless if the sale be necessitated by any very urgent emergency. Transacting business through Court will not be less expensive also. These incidents will make the privilege nugatory. It would be better if notices were allowed to be sent through the post office, and its certificate considered *primâ facie* evidence that such a communication was sent to the zemindar The time, six weeks, may be reduced to one month or three weeks. It will not be out of place here to suggest that for the purpose of giving all notices required to be served privately by this or any other Acts, without the intervention of Court or Government office, the Government may be moved to issue postal cards, like the reply cards, having parts and counterparts. The notices written on such cards and counterparts, being brought to the post office, shall be compared and the original sent to the addressee; the counterpart, sealed with date stamp, being returned to the sender. This counterpart will be admissible in evidence to prove that such a notice was sent. Sending notices even under registered cover will be less expensive and occasion shorter delay than through Court.

Section 34.—There is no provision in this section for trying the question of *bonâ fide* mortgage transaction, or for the determination of actual consideration paid under the mortgage.

Whatever privileges have been given to the landlords by section 32 will be nullified by this section, if the omission noticed above be not remedied. The ryot, instead of selling the holding by deed of out-and-out sale, will execute a mortgage deed with short term, and in order to avoid the landlord, as the Mahomedan vendor and vendee now do in order to avoid the pre-emption, insert in the deed a heavy consideration much above the actual price paid. The landlord cannot yet foreclosure in his favour unless he pays this heavy price under the decree.

Section 35(1).—No gift can now be made except under a registered document (*see* Act IV of 1882, section 122).

Section 35(2).—What procedure is the zemindar to follow, should he choose to contest the *bonâ fide* of the gift, or have any other valid objections against it? In order to avoid the procedure in section 32 many a sale will assume the shape of gift.

Section 37.—This conversion of the occupancy raiyat into tenure-holder will cause great anomaly. Will this section prevent transfer of occupancy right to mahajan and rack-renting the cultivating tenants by such purchaser? While mahajan themselves are cultivators, the lands really go from one cultivator to another. The practice of sale of occupancy right has been existing for many years in this district. No complaint of any sort has been seriously made in consequence of it. I do not think any such restriction upon sub-letting is necessary. The practice of allowing a ryot to convert himself into middleman is highly objectionable, as it tends to increase sub-infeudation, and is to a great extent detrimental to the interest of the landlords and the cultivating tenants. This must be discouraged by imposing the penalty of forfeiture. It is a very common practice in this district (Noakholly) of selling the ryati to a third party, and then to obtain an *osat* ryati from him on an enhanced jumma, thus creating a middleman between the landlord and the tenant at tenant's own will. Such sort of transaction requires legislative check.

It is the aspiration of many raiyats to be taluqdars, or middlemen. This section will give them facility in satisfying their cravings at the cost of their landlords. In such cases I think it will not be wrong to legislate that this converted tenure-holder shall have to pay the customary premium, equal to some multiple or fraction of his annual rent, as the case may be, to the landlord, as the taluqdars pay at the time of obtaining their first lease.

ENHANCEMENT.

It is not at all advisable to hamper voluntary contracts between landlords and tenants. The former will then be induced to resort to other means to avoid the law. The terms 7 and 15 years are too long, and may be reduced to 5 and 10 years respectively in (*a*) and (*b*). Longer the period, greater will be the zemindar's pressure to raise the rent to the highest point possible.

Section 41 (2).—It is doubtful whether a Rural Sub-Registrar, who shall generally register the lease, will be a competent person to judge whether the raiyat is *competent* to enter

into the contract. The word "*competent*" should be removed. He can register the contract if he finds the raiyat was willing to enter it, understanding its nature. No provision is made what the registering officer should do if he finds that the raiyat, understanding its nature, is willing to execute the contract, but the Sub-Registrar for some other reasons considers him incompetent to enter into it.

My humble notion is that no hard and fast rules can be made that shall be equitable and just for every part of the country. The law of enhancement should therefore better be left untouched. Every case should be tried on its own merits, and the amount of rent to be fixed being left to the discretion of the Judge, as it is now done. The present impediment to these suits is personal service of notices. This obstruction is now going to be removed. Neither zemindar nor the tenants have any reason to complain against the existing law, giving the grounds of enhancement. The law may enunciate these grounds only without imposing any limit.

Section 42 (1).—This section, as it stands, shall apply also to lands previously held by tenants other than occupancy raiyats. Will it be fair to restrict the zemindar to any limit when he is settling the lands for good to a "settled raiyat," from whose hands it shall never come out. He is really parting with a part of his right in the land, and in such cases, if the law be so strict, he will evade it in some way or other, or will take heavy premium as consideration for granting settlement.

Section 43 (6).—Enhancement under this sub-section is allowed on the rise of price of staple food-crop, but no provision is made for lands fit for special and valuable crops, viz. chili, tobacco, potato, sugarcane, betelnuts, &c. The lands for these crops are now practically let out on higher rate of rent than paddy lands without the least grudge being expressed by any party.

Section 45 (*a*).—Much difference in the result will arise in consequence of selection of different quinquennial periods by different officers. The comparison may be made with the quinquennial period which elapsed 12 years before the institution of the suit, or where it is practicable to ascertain date when the rent previously paid was fixed, with the period which elapsed with this date.

Section 50 (1).—The limit of 15 years is too long. It should be reduced to 10 years, when enhancement has been obtained either through contract or Court, and to five years when the suit has been dismissed on merits.

Section 51.—When abatement has been left to the discretion of the Court it is but fair that enhancement should also be so left, as it is now done. The raiyat should also be allowed the option of pleading these grounds for abatement in defending suits for arrears of rent for the period during which the causes for abatement occurred. He shall be thus saved from the expense of bringing suits for abatement.

Section 52.—Much will depend upon selection of areas and accuracy in preparation of price lists. In the district of Chittagong, so much intersected by hills, the price of staple food-crops (paddy) varies great deal within short distances. For every piece of land almost a separate price list will be needed.

Section 52 (5).—Fifteen days' time will not be enough for people of the villages to come and object to the Collector against the price list. It is doubtful whether they will ever do it.

Section 53 (1).—This commutation of rent in kind into cash is highly objectionable in Chittagong. It will really undermine what may be called Famine Insurance Fund in that district. All the landlords in the district receive a portion of the rent in kind, generally paddy, a portion of which, after the consumption of a year, is stored by most of the landlords for meeting exigencies in bad years. It is such storage which enabled the people to tide over the scarcity which followed the cyclone and pestilence of 1876-77, and which would have otherwise deepened into a famine Under the provisions of this section, the raiyat in an exceptionally high-price year will suddenly stop payment of paddy rent, and will gladly pay cash rent at the average rate of the ten preceding years. The landlords shall have that very year to purchase paddy for his own consumption at a price which will be much higher than the rent he shall receive in lieu. Raiyats are never a provident people. They will seldom keep store for future. It is the reserved store of paddy kept by the zemindar which saved their lives in the abovementioned years of scarcity in this division. The commutation contemplated in this section will not be unattended with practical difficulties also. The definition of "settled raiyat" as given in this Bill will scarcely leave in the Chittagong Division a single raiyat without right of occupancy. So all the paddy rent will be liable to be converted into money-rent, creating what may be called a political crisis.

CHAPTER VI.

Non-occupancy Raiyat.

The provisions of this chapter, even as it now stands, will substantially benefit the non-occupancy raiyat, who will be made rather a quasi-occupancy raiyat when these provisions will come in operation. Service of notice has always been dangerous rock for ship-wrecking enhancement suits under the present law, and it will be so in all suits for ejectment in future.

Section 58 (*c*).—Will not landlords be permitted to eject a tenant holding for a single year on an unregistered lease? Will it not be very hard for the landlords to require him to give notice to quit six months before the expiry of that very year? Sometimes when the land yields two or more crops a year, leases are granted for shorter period than even six

months. What procedure should be followed in such cases? The Bill makes no special provision.

Section 59.—Suppose a zemindar allows a tenant to remain for a year or two after the expiry of the term of his lease. Will he be barred by the operation of this chapter ever afterwards from ejecting him, even through Court?

Section 60 (7).—The term of judicial leases may be reduced. Any non-occupancy raiyat, who, having passed seven years as a raiyat, comes to hold a fresh piece of land under a new landlord will be sure to acquire the right of occupancy in it, whether this new landlord wishes it or not, before the expiry of five years' time to be granted by the Court under this section.

Section 60 (*a*).—The limit to enhancement in this sub-section, if not entirely removed, may be raised to one rupee, *i.e.*, 100 per cent. at any rate.

CHAPTER VII.

Under-Raiyats.

By under-raiyat in this section I think is meant the tenant described as such in section 4 (3) holding under raiyat, described in section 5 (2). If so, the word will not include the thirteen intermediate holders of Backergunge district, but only the cultivators of the soil. In such cases the limit here prescribed about the rent payable by cultivators will be enough to discourage them to hold under raiyats. To allow 50 or 25 per cent. over raiyat's rent is simply to allow the raiyat to rack-rent the cultivators of the soil, to discourage which only the section 37 has been introduced into this Bill

Section 63.—The remarks about the service of notice under section 59 apply with greater force to sub-raiyats whose tenures may not extend over a year, and who will be often retained by such disabled raiyats as are described in section 38, proviso (*a*) of this Bill.

It should be further noticed that in this Noakhally district the practice of sub-letting under permanent lease by persons holding raiyati pottahs is in vogue. Will these sub-leases be governed by this chapter? If so, it will change the character of these leases which they have acquired by custom, and cause great detriment to their holders.

CHAPTER VIII.

General provision as to Rent.

Section 64 (2).—Comments on this section have already been made in my remarks on chapter IV.

Section 64 (4)—A proviso should be added to the effect " if the land be distinguishable either by area or boundaries from other lands with which it has been amalgamated:

Section 67 (2).—Why the freedom of contract should be curtailed in determining the number of yearly instalments and portions of yealy rent to be paid by these instalments in case of raiyats and under-raiyats? It is made deliberately for the convenience of both parties.

Section 68 (2).—The experiment of paying rent by special postal money-order, and of refunding deposits of rent by the same means, is worth trying, and I think will prove a success.

Section 70 (3).—In case of payment by postal order [section 68 (2)], the receipt given by postmaster, together with the receipt of the payee of the order, will be enough to give the tenant a discharge from the money so sent.

Section 71 (1 *and* 2).—The time, three months, is too short. When the year closes with Choitra, the *panya* or the commencement of collection for the next year by almost all the zemindars in Chittagong Division is made between the month of Ashadh and Asvin of the next year. The collection papers of previous year are not made ready till this time; so I think the time in these two sub-sections should be extended to six months at least. Some remarks will be made at the end of this report bearing on the forms of receipt and account in the schedule.

Section 73.—It is evidently meant to discourage such deposits. Eight annas prescribed in sub-section (2) will be too high for small sums to be deposited, especially when such deposit is necessitated under clause (*d*).

Section 76 (3).—Provision should be made for accidental loss of receipt.

Section 79.—It is a peculiarity in this district to stipulate a heavy rate of interest in the lease, it being generally 75 per cent. per annum, and sometimes 150 per cent. per annum. Interest, however, is never taken from any defaulting tenant when payment is made amicably; nor is it shown in the zemindar's account and collection papers, but it is invariably demanded when a suit is brought for arrears of rent. Sometimes tenders of payments are designedly refused for the purpose of charging this extraordinary rate of interest. Some safegaurd against such extortion is needed.

Section 82 (1).—Association of at least one assessor should be made compulsory.

CHAPTER IX.

Improvements.

The right of making improvements in all cases ought at the first instance to have been given to the landlords. He is the capitalist, and in most cases his capital will be generally utilized as it is done at present. In case of raiyat with fixed rent, or rate of rent, the landlord

should have been allowed the right of calling upon such raiyat to effect the improvements within a reasonable time, in default whereof he being permitted to effect it.

Section 91 ( ).—Landlord and tenant, both ought to have been required to register improvements. The time, 12 months, ought to be extended to two years. Some provisions ought to be made for contesting such application for improvements, for these proceedings shall under section 92 (2) become evidence in civil suits.

Section 92.—No provision for surrender of lease by tenure-holder is made in this Bill. There is none in the existing law too.

Section 96 (3).—The section 9 of Act I of 1877 (Specific Relief Act) is sufficient to give relief to the raiyat if unlawfully dispossessed; the time for bringing suits under this section is rather short, and the title of the parties is not looked into in them. This section, however, permits subsequent suits for establishing title. The provision here made will determine the question once for all, and will thus deprive the parties to try the chance of a second suit for title.

Section 97.—In order to avoid litigation, the *consent* of the landlord ought to be in *writing*. The present law, section 26 of Act VIII of 1869, requires it to be so.

Section 98 (*e*).—Limitation in this section should be extended to six years at any rate.

Section 101 (1).—The measurement of land ought to be conducted according to local measure in presence of the parties, who will then be able to check the proceedings of the amin. The result may, if necessary, be afterwards converted into Government standard measurement.

Section 102.—The tenants having been permitted under section 73(1)(*c*) to make deposits of rent in case he is unable to obtain joint receipt of the co-sharers, the provision of sections 102 and 103 seem to be unnecessary. If they be retained in case (*b*), the application should not be made by *any one* but by a substantial number of persons having interest in the estate or tenure. No estate or tenure flourishes well under the management of appointed managers without supervision of the owners themselves. Sometimes an unscrupulous manager fattens himself at the expense of both landlords and tenants. His establishment also absorbs no small part of the assets.

CHAPTER XI.

It will not be easy to frame tables of rates for Chittagong Division, where classes of lands and prices of food-grains vary so much in consequence of the diversities in the physical formation of the country and means of exportation.

To hold these tables good for so long a period, from 15 to 30 years, is also not advisable. They may remain unaltered for 10 years.

Lastly, the expenses to be recovered both from occupancy raiyats and their landlords, whether benefitted by the tables or not, will make them unpalatable alike to tenants and their landlords.

These tables will not enable the court to dispense with local enquiries in enhancement suits if the parties do not agree as to the class to which the lands belong. When local enquiries are made, and the nature of the lands ascertained, court seldom finds much difficulty in ascertaining the rate of rent.

This chapter presupposes record of rights under the next preceding chapter, otherwise it will not be easy to ascertain the occupancy raiyats and their landlords in order to recover expenses from them.

CHAPTER XII.

Section 137(*a*).—The existing law does not require 12 years' continuous cultivation by the landlords.

NOTES.

CHAPTER XIII.

DISTRAINT.

This is the only machinery which the zemindars now possess for speedy realization of rent after the abolition of the notorious *pancham* and *saptam*; to deprive them entirely of it is now, I think, out of question. The law, as it now exists, is seldom resorted to, at any rate in Bengal, and more particularly in this Chittagong Division, except in cases of temporary and non-resident tenants of the *char* lands. Instances of complaints against the zemindars in such cases are very rare. My humble opinion is, where there is no dispute between the landlords and tenants, either about the amount of rent or the ownership of the land, the former seldom seek the aid of the court, nor the sale of the crop in most cases becomes necessary; the tenants pay their rent amicably either from their own pocket or, what is more general, by sale of a portion of the crop with the consent of the attaching landlords or their officers. In a few cases the landlords seek the aid of the court in causing distraint, and in most of these few, suits to contest distrainer's demand on one or other grounds follow with results generally unfavourable to the distrainer. I have seldom heard of distraint of crop of an occupancy ryot in this district or in Chittagong. I have consulted with zemindars, landholders and legal practitioners of these districts. They

agree with me in recommending that the occupancy right which has practically become saleable in these districts be made subject to summary sales. If this be done, the exemption from distraint, which they practically now enjoy, may be legally extended to them. Occupancy right may vary greatly in value, and may be very cheap where population is sparse and land abundant; but I think no permanent and saleable holding is worth existing if its value does not cover one year's rent. Experience has not shown me one. Whether the exemption be legalized or not, I am sure the distraint shall be practically in these districts, if not all over the country, confined to cases of temporary and non-resident raiyats only. The Government of India is satisfied that the process of distraint "can no longer be left to the unsupervised action of the zemindar's servants, and the reference to the courts is an essential safeguard." It now invites only suggestions for still further improving or cheaping the procedure adopted by the Select Committee. In this wise, I beg to suggest (1) the zemindars may be permitted, in a single application under section 140, to join any number of tenants whose holdings are within the same village, or in different villages, but at a convenient distance from one another, so that the distraint may be made by a single officer deputed under section 142. (2) The fees payable on this application may be so low as 4 annas, or something like it; the cost of deputation of an officer and fees and poundage for publication of sale notices and sale respectively, may also be made very low. (3) This officer should be empowered, on his own responsibility, to leave the property in charge of sureties supplied by the tenants, or in their default by the zemindars. I think the words "some other person" in paragraph 1 of section 142 and sub-section 3 of the section 144 do include such sureties. (4) The certificate to the purchaser under section 151 should be exempted specially from stamp duty chargeable under article 16, Schedule I of Act I of 1879. (5) The costs of procuring a certified copy of an extract of Collector's register, to show that the proprietor or manager's title has been registered under Act VII (B.C.) of 1876 [see section 139(1)], may be dispensed with if the zemindar's statement to that effect, to be made in an additional paragraph (*h*) of his petition under section 140(1), be accepted as *primâ facie* evidence of it.

If all these points are not carefully considered, and if no special provisions of such nature are made, the boon which the law contemplates to confer will be out of the reach of the petty peasant zemindars of this division, and the costs will swell out of proportion in cases of small holdings, ruining the landlords, and the tenants alike. As to the delay in issuing process in consequence of various restrictions put on it, it may be avoided by specifying time within which the officer of the court shall be deputed under section 142, and by making it compulsory, and not discretionary with the court, to issue *interim* order under section 141 (3) *immediately* after the examination of the applicant, to be served on the ryots free of all costs.

CHAPTER XIV.

Judicial Procedure.

Section 161.—Some special procedure for stamping the "writtren authority" is needed, if the benefit of this law is intended for the tenure-holders of limited income also, of whom this division abounds. These authorities ought to be treated as something different from general *powers-of-attorney*, otherwise the provisions of the section 37A of Civil Procedure Code, Act XIV of 1882, render this section quite unnecessary. If it be treated as "*Appointment*" under article 6 of Schedule I of Act I of 1879, the zemindars will try to—I believe they actually now do—evade it without much, if any, chance of detection.

Section 163—The sections of the Civil Procedure Code, mentioned in sub-section (*a*), are very seldom, if at all, resorted to by the parties in any suit under Rent law. The sub-section (*e*), I fear, will be a dead letter in the generality of cases; but if properly attended to, it will help the court in excluding much unnecessary and irrelevant matters which now find their way into record through the untried pen of the legal practitioners. The sub-section (*f*) alone will give some material relief to the overworked courts. Except this, I do not think this section will much improve the procedure that is now followed in 999 out of 1,000 cases. The sub-section (*g*) seems to be redundant. Section 256 of Civil Procedure Code empowers court to issue execution on oral application when the decree is for money less than Rs. 1,000. Summary execution for higher sum is neither necessary nor recommendable.

Section 164.—This section may be a powerful engine of oppression in the hands of the unscrupulous persons to annoy the neighbouring zemindars and their tenants, and in shifting *onus probandi* on the weak (though rightful) party. The tenant, and the party under whom the defendant falsely sued holds, may be too poor to be able to pay in the rent demanded in the suit. The decree will in that case be made *ex parte* on his face, and he shall stand by quite helpless. The law may be left as it is; the question of title being tried, not by dragging the third party into court in the most undesirable position of a plaintiff, but incidentally in presence of the tenant only In order to discourage the tenant to raise question of the landlord's title merely to harass the landlord, or cause unnecessary delay for gaining time, or to throw undue weight of evidence on his shoulder in a summary rent suit, the courts may be empowered in such cases to order for eviction of the tenant at its discretion, if the plaintiff moves it to that direction, though no prayer for ejectment was made in the plaint. To eject such a refractory tenant is not against the sound principle of law, equity, or good conscience.

Section 168.—Further provision may be added to this section abolishing all appeals in purely arrears of rent suits when the amount is petty, say Rs. 10, or 20, or 25. The lower judicial courts of all grades may now be considered fully competent to deal with such suits with little chance of errors in fact. Special powers proposed in clause (6) may be given to officers of greater experience and tried merit.

Section 174.—With reference to the remarks of the Select Committee on this section, I beg to submit that mere conversion of plaint into application will not go to reduce to any appreciable extent the expenditure of the litigation which this section will rake up. Much will depend upon the procedure that shall be followed. The cost of local enquiry through revenue officer may alone be simply prohibitory, especially in cases of petty holdings.

CHAPTER XV.

Sales.

Sections 182 *and* 183.—I think the remarks made by Hon 'ble Mr. Gibbon, respecting the distinction that is made between holding with fixed rent and occupancy holding, are perfectly opposite. It will be a source of much litigation and disputes between the parties in execution proceedings. I see no harm in applying the same procedure [section 179 (*a*), sections 180 and 181] to all transferable holdings without distinction. The question whether a holding is held at a fixed rent or rate of rent is not an easy one to be summarily dealt with in execution proceedings. It is one of the stumbling-blocks on which enhancement suits fail.

Section 192.—The time for presentation of old unregistered instrument should be extended to *three* years at least. It is very doubtful whether the change in the law will reach the ears of those for whom it is intended, viz. the rural population, within so short a time as one year.

CHAPTER XVI.

Summary Sale.

Great deal of litigation may be reduced by making the provisions of this chapter with some modifications applicable to all saleable tenures without distinction.

Section 195 (1). Whether the first day of Baishakh in this section and first day of Kartic in section 196 should still be retained as the last days for making application of putni sales is a matter that requires much consideration. I think these days should be fixed in each district with reference to sunset days for payment of Government revenue in each. It ought to be also a matter of consideration whether the place of making application for sale, and of sale in cases of petty tenures, say of annual rent below Rs. 100, and in district like Chittagong, where head-quarters is not at a convenient distance from all parts of the district, should be transferred to Munsif's courts or sub-divisional court, *i. e.* to a court nearer to the tenant's home. These petty taluqs seldom fetch proper price in consequence of the great distance of the head-quarters from these tenures and people interested to buy them. The zemindars may strenuously oppose this transfer of sales to mofussil courts, on the ground that they will be required to keep a general agent in each court; but this difficulty can be obviated if the tehsildar duly authorized be permitted to make the application and represent the landlord at the sales (2) The date of sale should likewise be changed. The landholders should be permitted to recover money by such sale at least 15 days before the sunset day for the payment of the Government revenue. (3) Notices of sale should be published also by beat of drum, or by any similar local and customary means, in the village or villages where the holding is situated. Extract of such notices should be sent by post to the defaulter, the landlord keeping a post-office certificate to be filed in court before the sale.

Section 209.—The paragragh 26 of the India Government letter shows how anxious it is to provide a "speedier and cheaper method of recovering arrears, provided always that it does not jeopardise the ryot's right." Nothing can answer this purpose better than the extension of the provisions of summary sales with some modifications suggested in my remarks on section 195 to all saleable tenures and holdings of every description. Provision of a special law for registration of such holding, which may be attended with difficulties of various kinds, is, in my humble opinion, hardly wanted for the purpose of making such concessions. Such tenures and holdings, even where no written leases exist, are ordinarily sold in civil courts in execution of decrees both for arrears of rent and other dues. The necessity of production of leases even is seldom felt. Any misdescription, which rarely occurs, is soon corrected—sometimes amicably and sometimes through courts. The crop of suit arising from this source is not large, and may be still more reduced if the landlord be under heavy penalty compelled to describe the holding accurately in the application and the notices for sale. The form of receipts and accounts prescribed in Schedule III, interchange of which is made compulsory by sections 70 and 71, will accurately show the area, rent, and other particulars of the holding to be sold. Law will make filing of accounts indispensable with an application for summary sale.

The object aimed at by compulsory registration of tenure may also be obtained with much less costs and trouble to the State and the people alike, if the interchange of leases in all cases be made compulsory. The extension of Chapter V of Act IV of 1882

(Transfer of Property Act) under section 177 of it will secure this purpose, or a section may be added to this Bill. As for the existing tenures and holdings of which no written engagements are forthcoming, exchange of leases may be made compulsory within three years or so from the passing of this Act. The registering officers may be called upon to keep a separate register for all the registered leases. This book shall of itself become a register of all the tenures and holdings. The disturbance that may arise in few instances in consequence of this law will soon settle of itself.

CHAPTER XVII.

Section 210.—The paragraphs (*e*), (*g*), and (*h*) may not be extended to contracts evading the privileges for sufficient considerations and duly registered. Exemptions granted by sections 211 to 216 will take away many leases from the operation of this section. In this division most of the leases will come under section 211.

SCHEDULE III.

This form is defective in a very important respect. Though the section 69 (1) and (2) is quoted at the foot, yet in the body of the receipt no space is reserved for stating the *year* and *instalment* to which the tenant wishes the payment to be credited. The form is given in duplicate, yet one to be retained by the zemindar is not marked as such, both may then require stamp under Stamp law, Schedule I, No. 52. The present system is, the zemindar keeps the counterpart of the receipt signed by the tenant and calls it *chalan*. This seems to be a better practice, as it binds both parties to one another; the form on the left hand therefore should be called chalan or counterpart of receipt Similar remarks apply to form for "account." The one to be granted by the landlord should be called "counterpart, or duplicate, or copy of account," and signed by the landlord, while the account remaining with the landlord should be signed by the tenants.

CHANDRAKUMAR ROY.

The 28*th July* 1884.

C. E. G.—Reg. No. 4793C—315—1-8-84.

No. 25, dated Dinagepore, the 28th July 1884.

From—The Sudder Munsif of Dinagepore,

To—The Officiating Secretary to the Government of Bengal, Revenue Department.

REFERRING to your circular letter No. 9T.—R., dated the 5th June 1884, I have the honour to report as follows:—

CHAPTER II OF THE BENGAL TENANCY BILL.

Paragraph 4 of the circular letter of the Government of Bengal No. 3T.—R., dated the 24th May 1884.

(*a*).—The definition of ryot in section 5 (3) does not cover all classes of ryots. "Proprietor" means a person or a number of persons owning an estate. Section 3 (2)—"Estate" means registered revenue-paying and revenue-free lands. Section 3 (1)—There are unregistered revenue-free lands or holders of such lands. Section 5 (3)—Does not include persons holding land under unregistered lakhrajdars and is therefore imperfect.

2. (*b*).—Persons holding upwards of 100 bigahs of land generally sub-let a portion of their holdings. At times they sub-let the whole holding This, I believe, is the practice of this district I am not for retention of the upwards of 100 bigha-presumption in the Bill, and for the following reasons:—(1) When a tenure is created, and tenures are not unfrequently permanent and transferable, adequate consideration is paid to the zemindar, and the presumption throws an unfair burden of proof on the landlord. (2) A tenure-holder is in a much better position than an occupancy tenant as regards the zemindar. The former is exempted from the rules regarding pre-emption and distraint, but the latter is subject to them. The presumption converts a jotedar of upwards of 100 bigahs into a tenure-holder, and, while it improves his position by exempting him from the rules regarding pre-emption and distraint, it deteriorates the position of the zemindar to that extent by taking from him those rights. (3) The presumption will work hard against auction-purchasers, who will be unable to rebut it for want of necessary evidence. However, this hardship might be mitigated by record of rights, if that chapter is retained in the Bill. (4) The presumption cannot work in case of division of holding amongst heirs and successors in interest of the tenant. As shown above, I think the presumption is not fair. I am not aware if any presumption of the kind would be a fair presumption.

3. (*c*).—Section 37 will give rise to frequent disputes for two reasons—(1) It is not easy to ascertain whether more than half of the holding has been sub let; (2) in consequence of the proviso (*a*), I fear it will not work well. Besides, I doubt if it will secure the objects for which it was devised. The object of the provision is—(1) To discourage money-lenders or capitalists from purchasing occupancy rights; (2) to give actual cultivator of the soil right of occupancy. The converted tenure holder is in a better position than the occupancy tenant owing to his exemption from the rules regarding pre-emption and distraint, and with right of pre-emption given to him. As regards his occupancy tenant (sub-tenant), he can buy up the occupancy holdings under him. Besides, in a 100 bigah jote 49 bigahs may be in actual cultivation of the occupant tenant. These advantages, instead of deterring the capitalist from purchasing the converted tenure, will induce him to buy it; and when a tenure of the kind is bought by such a purchaser, the probability is that the tenants (sub-tenants) would be rack-rented or made to abandon the holdings.

CHAPTER III.

Paragraph 5 of the Government letter.

4. Under the rules laid down in Chapter II it is difficult to decide what holdings are tenures and what holdings are not. Chapter III lays down rules regarding enhancement of rent of tenures. The law by which the rent of a dependent talookdar is enhanced is contained in section 51 of Regulation VIII of 1793. The grounds of enhancement are—(1) Special custom of the district; (2) the condition under which the tenure is held; (3) the fact of the talookdar having received abatements from his jama, and thus subjected himself to the increase demanded, provided the lands are capable of affording it. When there was no customary rate, section 8 of Regulation V of 1812 provided thus:—"In the case of a dependent talookdar, if the rent of the lands be computed according to the rates payable by ryots or cultivators for lands of similar quality and description, a deduction shall be allowed from the gross rent in the adjustment of the jama of such dependent talook at the rate of 10 per cent. from the talookdar's profit or income, over and above a reasonable allowance for charges of collection, according to the extent of the talook." This section was repealed by Act X of 1859, but its principle has been followed in the assessment of such tenures. Mohamed Aynooddin, 2, Board's Rep. 749, Morgan and Shambhoo Nath Pundit, J.J. In one case the talookdar was allowed a profit of 6½ per cent. only—*vide* 3 B. L. R. R. A. C. 270. Thus under the case law the talookdar was allowed a profit not exceeding 10 per cent. of the collections, after deduction of collection charges. But under the Bill the tenure-holder has been given a profit of not less than 10 per cent. of the balance which remains after deducting from the gross rents payable to him the expenses of collecting the rents, and also the "risks of collection." Under the existing case law the rent of a tenure-holder can be enhanced up

to a reasonable limit, but the limit of enhancement under the Bill is not to exceed double the previous rent. Thus under the Bill, when the enhancement exceeds double the previous rent, the excess, how great soever it be, will go to the tenure-holder. Under the existing case law there is no limit as to the period during which the enhancement allowed will remain in force, nor is there any provision that the enhancement allowed will be gradual; but the Bill provides a limit to the period of enhancement, and prescribes that the enhancement decreed may be gradual. Thus it will be seen that much indulgence has been shown to the tenure-holder under the Bill to the injury of the proprietor of the land, and for no adequate reason. In my humble opinion, the present case law should be embodied in the Bill with this provision, that when the enhancement has been solely due to improvement of the land by the tenure-holder, the superior tenure-holder or the proprietor, in the absence of any contract to the contrary, shall not be entitled to get any.

5. The position of a tenure-holder is different from that of an occupancy tenant There can be no uniform rules to regulate enhancement in both cases.

CHAPTER IV.

Paragraph 6 of the Government letter.

6. *Section* (642).—The 20 years' presumption is a very valuable provision, which the Bill contains in the interest of the ryot, but it operates with harshness particularly against the auction-purchaser of proprietory rights' who is unable to rebut it for want of necessary papers of his predecessors in interest. In enhancement suits the presumption is generally and almost invariably pleaded. It is as often disputed, though not as often rebutted. Section 122 of the Bill does not sufficiently restrict the presumption. In order to sufficiently restrict the presumption, I think a provision should be made to this effect, that no tenant whose title to hold at fixed rates is unregistered after a certain date to be fixed by Legislature can claim the benefit of the presumption.

CHAPTER V.

Paragraph 7 of the Government letter

7. (*a*).—The greater the area of the estate, or portion of an estate, over which the capacity of the settled ryot to hold land on occupancy title extends, the greater is the loss of the zemindar. The loss can not be sufficiently obviated if the portion of estate within which the settled ryots would acquire rights of occupancy be limited to district or sub-division of a district; but this provision may sufficiently protect the ryots.

8. (*b*).—Butwarahs are frequent in Behar and Eastern Bengal. When the butwarah of an estate is completed, the tendency of the maliks of the several portions of it, which have been portioned, is to give new land to the tenants at higher rates in that portion of it in which their dwelling-houses or homesteads have fallen, or to drive out the old tenants if they do not agree to pay the rates demanded. This they can easily do, as each malik has his *separate* portion of the estate. In order to protect the tenants of East Bengal and Behar, I think it would be sufficient to provide that the parent estate of old shall be taken as the area over which the capacity of the settled ryot to hold land on occupancy title should extend.

9. *Section* 28—I think, applies to a case in which the landlord is the sole owner and not a shareholder, for otherwise the doctrine of merger cannot operate.

Section 29 (1)—Contemplates the case of a joint owner, proprietor, or tenure-holder. I think there can be no harm if the latter provision is retained

10. A provision similar to section 29(2) may be inserted in the Bill when the occupant tenant buys a share of the estate in which his holding is situate (in order to prevent the merger of the occupancy right). Any occupant tenant cannot lose the occupancy right by reason of such purchase.

Paragraph 8 of the Government letter

11. *Section* 31(6).—I think it is fair that the occupancy tenant should be allowed to make improvements on his holding if he is disposed to make any.

12 *Section* 31 (*f*).—Occupancy rights, if made transferable, are in danger of largely falling into the hands of money-lenders, and also of persons who are hostile to the landlord. The former class are rack-renting landlords. Besides, if the money-lenders cultivate any other than food-crops on the holding purchased—and this they generally do—the result will be a scarcity of food-grains and consequent famine. This is nowhere better seen perhaps than in the province of Behar, where a large portion of lands, and the best lands, are appropriated to the purpose of indigo cultivation, and where failure of food-crops for a single year or so brings on scarcity, if not famine generally. The plan devised by section 37 to prevent money-lenders from purchasing occupancy holdings does not cure the evil. This has been already submitted by me. The right of pre-emption given to the landlord greatly diminishes the value of the holdings, and no purchaser is expected to offer the full value when the landlord has right of pre-emption. I think the best course would be to leave the question of transferability or otherwise of occupancy rights to local custom, which is the existing law. In this district occupancy holdings are transferable by custom. As there are few speculators here, the evil effect of transferability is not known.

13. (*a*).—The grounds of enhancement mentioned in the Bill are not exhaustive. It is seen that the productiveness of soil increases from other causes than landlord's improvement and fluvial action, though it cannot be ascertained what those causes are. This has been omitted from the Bill.

Paragraph 9 of the Government letter.

14. (*b*).—The prevailing rate has been objected to as a ground of enhancement. But I think the objection is untenable. There are prevailing rates for one class of land in some districts, and in others there are none. Attempts have been found on part of landlords to create fictitious and high prevailing rates by fabrication of papers, and cases also have been met with in which prevailing rates have been found to exist. I think it would be unfair to abolish the prevailing rate as as a ground of enhancement. The Courts should be left to decide the cases according to the evidence before them.

15. As regards the extent of enhancement material changes have been introduced in the Bill. The Bill provides for two methods of enhancement—one by private agreement registered, and the other by suit in Court. The former method has been restricted. But I do not think it would be proper to interfere in the freedom of private contract. I do not remember to have met with instances in which tenants have agreed to pay enhancement out of Court, such as to preclude the belief that in so agreeing they were either free agents or knew what they were doing. I have only heard of such cases, and the number of them is very few.

Paragraph 10 of the Government letter.

16. Equalization of limits of enhancement in and out of Court. Considering the law, limits of enhancement in both cases will tend either to stop enhancement by private contract altogether, or to reduce the limit of such enhancement to a point much lower than the limit prescribed; for when tenants come to know that in a judicial enquiry greater enhancement cannot be obtained through Court than by private contract, they will not come to terms, or they will agree to pay a trifling or nominal enhancement. In cases of private contract I think it is sufficient to provide that the contracts should be registered, and that special care should be taken to ascertain that the tenants in so contracting were either free agents or knew what they were doing.

17. As regards enhancement through Court, there is manifest injustice in allowing 50 per cent. enhancement only on the ground of prevailing rate; for there can be no reason why the tenant from whom the enhancement has been claimed should pay less rent than other tenants who are similarly circumstanced as he is. As to grounds of rise in prices and increase of productiveness due to fluvial action, 25 per cent enhancement on the old rent has been allowed in each case. When the enhancement is greater, the landlord gets an increase only to that extent, and the remainder of the enhancement goes to the tenant. In my humble opinion, the limits of enhancement should be raised, and in the case of prevailing rate the landlord should be allowed rent at the full rate; and in the other two cases mentioned, the enhancement should be allowed up to a limit not exceeding double the previous rent, and it should be provided that the enhancement decreed shall have a currency of ten years.

18. The ground of prevailing rate is workable. The ground (*b*) is not fairly and mechanically workable always upon the basis of price lists, even if such lists can be correctly prepared; for the increased cost of cultivation has to be deducted at times, and it is impossible to prove such costs without record The grounds (*c*) and (*d*) are workable properly after tables of rates are prepared, if the same can be properly prepared. If landlords do not get facility in obtaining adequate enhancement, the result will be, as is now the case, most disastrous to tenants; for the former will try to harass the latter by frequent litigation by means of rent suits for the different kists of the year—a proceeding which is helped by the Court Fees Act—and will make them abandon or otherwise part with their holdings. This harassment can only be avoided by the tenant by deposit of rent, but all tenants have not money at hand in time to help them. Hence I think the interest of the tenantry would be better protected if proper facility is given to the landlord in obtaining an adequate enhancement of rent, when the same is obtainable, instead of restricting enhancement, both in and out of Court, as in the Bill.

19. An apprehension has been felt that, as no limit has been placed on rent which a non-occupancy ryot has to pay, the tendency of section 60 (9) and of section 41 (2) will be to increase the prevailing rate to the highest possible limit. But I think there is no good ground for such apprehension always. A landlord cannot settle any land with a non-occupancy tenant at a higher rate than the prevailing rate of the village, for under ordinary circumstances no tenant will ever agree to pay such higher rate when the land is not capable of bearing it. If owing to extraordinary causes the fertility of any village increases to an unusual degree, the landlord may let lands to new tenants at rates higher than prevailing rates, for the tenants will be then willing to take them at such rates. In such cases the pre-emption rules cannot help the landlord, for the occupancy tenants would be unwilling to part with their holdings. But if majority of the tenants die, and owing to superior fertility of the soil they cannot desert their holdings, in that case only the apprehension alluded to may be well founded. But this increase of prevailing rates cannot harm the tenants, for they become the willing causes of it. As the danger apprehended lies in extraordinary cases, or in rare or very few cases, and as the lands are capable of bearing such enhancement of prevailing rates in such cases, I do not think there is any necessity of any provision to meet it.

Paragraph 11 of the Government letter.

20. As far as my knowledge goes, *bastu lands* are held either as a part of the holding or by separate conditions by means of pattahs and kabuliyats. This is the custom of this district also. The former case is very common. In districts of Behar, where batwarahs are common, it often happens that homestead lands of tenants, which form a part of their holding, fall in a different *putty* by partition from that in which the arable portion of the holding is distributed, and the tenants take new lands or holdings from the maliks of the *putty* in which their homestead or dwelling-houses have fallen. The maliks then settle new holdings with the tenants at higher rates, and this they are enabled to do for two reasons—(1) The tenant cannot leave his homestead easily for more reasons than one; (2) each malik, having his *putty* separate, can with little difficulty deprive him of the arable portion of his old holding. It also happens that tenants, the arable portion and homestead portion of whose holdings have fallen in the *putties* of different maliks by partition, retain possession of the holdings, including the homestead, and do not take new land at higher rates; but such cases are very rare. Under the circumstances, the tenants have no doubt right to retain possession of such homestead lands as part of the occupancy holdings.

Paragraph 12 of the Government letter.

21. I am given to know that in parts of this district the soil is deteriorated in consequence of the appearance of a substance like *reh* on the land. It is whitish and is called *khar* or *nona mati*. It does not permanently diminish the fertility of the soil. In some years it appears, and in other years it does not. The provision of the section 51 (*a*) includes this calamity (when it permanently deteriorates the soil).

Paragraph 13 of the Government letter.

22. As to commutation of produce-rents into money-rents, I believe the provision of the Bill will affect more the landlords of Behar than those of Bengal. In Behar about one-third of the land pays rent in kind, and in some cases the profit of the landlord exceeds half of the gross produce. The bhowlee system has its advantages and disadvantages. When there is no crop, the bhowlee tenant has to pay nothing as rent, but liability for rent cannot be avoided by the tenant who pays money-rent in years when there is a failure of crop. When there is increase and decrease in the productive powers of the soil, the landlord and the tenant gain and lose equally, the share of each being half of the gross produce. In case of increase of productive powers, there is no necessity for the landlord to bring enhancement suit, and when the productive powers decrease, the ryot does not come to Court to obtain a reduction of rent. I think it would be ruinous to the landlord of Behar if the provisions regarding commutations of produce-rents into money-rents are retained in the Bill. Besides, it is the practice of many land owning families in the villages of Bengal to let a portion of their lands as produce-paying holdings. The rice thus received as rent forms the stock of their daily consumption (for they do not buy rice in the market), and with the money-rent they receive they pay rent due to the landlord or Government revenue, and manage to meet their ordinary expenses. The advantage of commutation to the tenant is such that it will be his interest to have the produce-rent commuted if the provisions in the Bill are retained. The provisions regarding commutations affect this practice and are revolutionary.

23. Grain rent varies from year to year as regards the amount when the share to be paid is fixed. This is due to two cases—(1) Variation in the amount of produce, and (2) variation in price. When the grain rent to be paid is a fixed share of the produce, the rent to be so paid may be considered to be invariable, and the fixed proportion of the crop, notwithstanding rise and fall in price, can be fairly considered with regard to the clause (2) of 20 years' presumption as the natural and equivalent antecedent of a money-rent invariable over a term of years.

24. I doubt if enhancement can be fairly based upon the price lists alone and worked out mechanically always. It is necessary to deduct the increased cost of cultivation when the same has increased. Section 48 of the Bill provides that the Court shall not in any case decree any enhancement which appears to it, under the circumstances of the case, to be unfair and inequitable. When the increased cost of cultivation has to be deducted, it has to be proved. It is difficult to prove it without any reliable record; and so enhancement cannot in all cases be worked out mechanically on the basis of price lists. It is seen, and the cases are few, that the tenants sell crops to their *mahajuns* at a cheaper rate of price than the current market rate.

Paragraph 15 of the Government letter.

This they do in consideration of the loans supplied to them previously. It is a matter for consideration whether the price lists can be fairly acted upon in raising the rent payable by such tenants.

25. In the event of rise in price it does not always happen that the cost of cultivation increases, except as regards the seed. Cost of labour increases or decreases according to the state of the market—demand and supply. In many or most cases the cultivators themselves are the labourers, and in those cases I think it is sufficient to deduct the increased price of seed only. In other cases a similar deduction only does not meet the ends of justice.

26. There is a difference in the cost of labour between well-communicated and non-communicated or ill-communicated districts, but unless the average value of labour in those districts for certain years is known, the extent of the deduction which has to be made on account of increased costs of cultivation with reference to those districts cannot be stated.

CHAPTER VI.

Paragraph 16 of the letter of Government.

27. The provisions regarding the non-occupancy tenant who is in the position of a tenant-at-will under the existing law have been newly introduced in this Bill. They are such that he cannot but acquire right of occupancy in time. The judicial lease which the landlord is compelled to give him under section 60 (7) makes his position firmer and safer in the attainment of right of occupancy. I do not recollect any instance in which a landlord ever attempted to oppose the growth of occupancy right, though I was in Behar for about 12 years in different capacities. Landlords try to disposses tenants in order to obtain an increased jama or enhancement of rent, and not to prevent the growth of occupancy right. This is the result of my experience. The provisions in this chapter materially affect the landlord. They serve to facilitate the growth of occupancy right, but to the injury and loss of the landlord.

CHAPTER VII.

Paragraph 17 of the Government letter.

28. The provisions contained in this chapter will serve to check sub-letting in certain cases and not in others. When the quality of the land is such that by sub-letting it a tenant can derive a profit of more than 50 per cent or 25 per cent., the rules contained in this chapter will check sub-letting; but when the tenant does not expect to get a higher profit than the above percentage, he would not sub-let his land. Short sub-leases (section 38), and the restrictions put on rent payable by sub-tenants (section 62), check sub-letting to the extent mentioned above. Those sections also affect the operations of section 37; for if an occupancy tenant cannot get by sub-letting more than 50 per cent. or 25 per cent. profit, when he expects to have larger profit by keeping the land in his cultivation, he will not sub-let. That section will, I believe operate in cases of inferior quality of lands only. Section 62 will not be workable in the district of Backergunge, in which numerous middlemen or tenure-holders intervene between the zemindar and the actual cultivator of the soil. I do not think any limitation on under-tenant's rent, or any limitation of the terms of sub-lease, per section 38, is desirable.

CHAPTER VIII.

Paragraph 18 of the Government letter.

29. *Sections* 81 *to* 83.—Concern the district of Behar particularly. The gross produce of a bhowlee holding in Behar is thus appraised: The quantity of the produce is estimated on the field by men of the landlord, and a value is placed upon it according to the market rate in presence of the tenant. A paper is thus prepared, called *khesra kankutu* or *khesra danabundy*. The landlord gets half the value of the produce so estimated. In the case of *betai* holdings in the same province, the division of the produce takes place on the field in presence of the parties (*e.g.*, the landlord or his agent and the tenant), and each party takes his share, which is half of the gross produce In this district we have *adhi* holdings only. The tenant cuts the produce and brings it to the place of the landlord, where it is divided. After division, the landlord and tenant each takes half share of the produce. Section 83 (2) gives the tenant the exclusive possession of the produce to be divided, but this is opposed to the practice in this district, as noted above. Sections 81 to 83 include all cases of appraisement or division of produce, and also possession of produce before appraisement or division in Behar.

30. The forms of receipt and account in section III of the Bill are sufficient.

CHAPTER IX.

Paragraph 19 of the Government letter

31. *Section* 90.—In the province of Behar, where rainfall is scanty, or is not so copious as in Bengal Proper, tenants irrigate their fields by digging wells (*i e.*, *kucha* wells) or by excavating *pynes* or aquoducts connected with rivers, navigable or otherwise. This is the practice of the holders of high lands. I cannot say if such *kucha* wells are dug with the permission or acquiescence of the landlords or without it. But the high lands are such that they cannot possibly yield anything unless irrigated, and there are cases in which irrigation of such lands can be effected only by water from the well. Whatever be the *status* of the tenant, be he an occupant tenant or a non-occupant tenant, the holding would be useless to him if he is not permitted to dig a well for irrigation purpose. It is not necessary to empower a non-occupant tenant to construct a well for the irrigation of his fields, for the landlord cannot but give him the permission; and if the permission is denied, the tenant, as a matter of course, will surrender the field to the loss of the landlord. Irrigation of lands with water from the well is rare in Bengal Proper, and no such provision in that case is necessary.

Paragraph 20 of the Government letter

32. I think section 96 fairly deals with the case of abandonment of holdings by tenants. Its provisions are liable to be abused, but such instances, I believe, will be rare. The landlord is amenable to criminal penalties in such cases.

Paragraph 21 of the Government letter.

33. As far as zemindars are concerned, I think it is sufficient that measurement of lakhiraj holdings should extend to a survey only of external boundaries.

34. I think it is safer to conduct the actual measurement by the local and not by the English system of mensuration, and then to convert the said measurement into the English measure.

Paragraph 22 of the Government letter.

35. I am against the appointment of managers for management of joint estates. It is of no benefit to the landlord or to the ryot. By appointment of managers the zemindar's responsibility for payment of Government revenue is not a whit diminished, but the risk of punctual payment of the same is increased. Generally managers enrich themselves at the expense of landlords and tenants alike, and act detrimentally to the interests of the proprietors. When there is a dispute between the co-owners, the tenant is sufficiently protected by section 73 (*c*) by deposit of rent.

CHAPTERS XI AND XII.

Paragraph 24 of the Government letter.

36. As to tables of rates, owing to multiplicity of rates in certain parts of the country, it is impracticable to prepare them. But when a table of rates is prepared for any tract of land, it will facilitate enhancement. When an enhancement suit is based upon such a table, the landlord has only to prove to what class or classes of land the holding belongs. This may be ascertained by proper local enquiry.

37. As to proprietors' private lands, I think the definition given in section 138 (*a*) of proprietors' private land is not exhaustive. It has been seen in certain parts of Behar that proprietors let their zorat or private land on *munbundee* principle. The tenants cultivate those lands and pay a fixed quantity of produce as rent. The above definition does not include this class of land.

CHAPTER XIII.

Paragraph 25 of the Government letter.

38. The Bill abolishes the right of private distraint which the landlords enjoy under the existing law. Distraint through Court is attended with delay. The *interim* order, per section 141 (3), prohibits the removal of the produce pending orders, but it does not prevent delay. When the tenants strike, the only speedy way of realizing rent from them is by using right of private distraint or distraint through Court. It is a fact that the right of distraint has been often abused. But if very heavy penalties are provided in the case of abuse of the right, that is sufficient to bring the landlords to their senses. The saleability of the occupancy right is not perfect security for realization of rent. In places in which there is no demand for land, the remedy of sale is inefficacious to realize rent. I think the present law of distraint may be retained for occupancy tenants and non-occupancy tenants alike, with heavy penalties in case of abuse of the right.

CHAPTERS XIV AND XV.

Paragraph 26 of the Government letter.

39. It is very inconvenient that a landlord should be permitted to sue a number of tenants by means of one plaint. A suit of the kind may be conveniently and easily disposed of when the defendants do not appear, but difficulty occurs when the case becomes defended, and the different defendants defend in different ways, for each tenant has to be heard separately, and separate judgments have to be written; or in other words, one judgment must contain several findings with respect to the different tenants. When a case of the kind comes on for trial it may happen that some defendants may apply for time to file evidence, while others may be prepared to examine witnesses, and it is some time before it can be taken up for trial. However, the general practice is to try *analogous* rent suits of the same landlord together, for it is convenient to try them together.

40. The procedure sections, *e g.*, 163, 164, 168, 171, 175, 177, 185, and 186 have been read by me. They simplify the judicial procedure. The sections may be retained, except section 185. That section will much diminish the value of occupancy holdings. Section 164 will sufficiently fulfil the purpose for which it has been introduced. I think it would be better to add that the defendant's petitions for appeal and re-trial will not be admitted unless he pays or deposits in Court the amount of the decree money.

CHAPTER XVI.

Paragraph 27 of the Government letter.

41. *Section* 209—Is very useful and important. I think the provision of summary sale should be made applicable to all permanent tenures or occupancy holdings with right to hold at fixed rent after they have been recorded and registered.

CHAPTER XVII.

42. *Section* 213.—*Chur* or *dearah* land has been defined to be land ordinarily liable to improvement or deterioration by fluvial action. According to this definition, I think it will not be easy to ascertain what lands are *chur* or *dearah* lands.

Paragraph 29 of the Government letter.

43. *Section* 210.—I am not for the provisions of this section. Freedom of contract cannot be taken away. In order to protect the interests of the tenant, I think it would be sufficient to provide that in case any such contract is entered into by the tenant, the contract shall not be valid unless registered.

Paragraph 30 of the Government letter

44. So far as this district is concerned, section 227 of the Bill is enough for the purpose.

45. I am given to know that dependant talooks of the kind mentioned in paragraph 2 of the letter of Government of India, No. 784, dated the 5th May 1884, are not in existence in this district. Since such talooks are permanent and held at fixed rent, the summary sale law may be made applicable to them.

Paragraph 31 of the Government letter.

46. In case the arrears of R. C. and P. C. are very small and trifling, the summary sale law may not be made applicable for their realization.

Paragraph 32 of the Government letter.

47. *Utbundy* and *hat hasili* tenures do not exist in this district. Lands are taken by tenants for one season, or for one year or two years, at a rate of rent agreed between the contracting parties. When the crop is ripe for reaping, the quantity of the land cultivated by the tenant is measured, and then the rent payable is settled. When land is taken on the above condition, the tenant is called *utbundy* tenant, and the tenure is called *utbundy* tenure. Tenures of this kind exist in Nuddea and 24-Pergunnahs. The ordinary incidents of the ryoti tenure do apply to such tenures.

Paragraph 33 of the Government letter.

48. Howlas, nim howlas, usat howlas, and usat nim howlas of Backergunge are transferable by custom. These tenures are created generally by interchange of pattahs and kabuliyats. The tenures are well known and well defined. I think they can be specifically excluded from the operation of the pre-emption clauses.

Paragraph 34 of the Government letter.

49. The *bastu* question has been discussed by me in paragraph 20 of my this report with reference to paragraph 12 of the Government letter dated the 24th May 1884. Here I beg to add, with reference to paragraph 2 of the circular letter of the Government of Bengal under reply, that within my jurisdiction as Sudder Munsif of Dinagepore no custom exists of exempting from sale *bastu* or homestead land when the occupancy right in the arable portion of the holding is put up for sale in execution of a decree. I have not known any instance of the kind. When the homestead land is held under a different engagement from that under which the arable portion of the holding is held, the decree-holder, at his option, proceeds either against the arable holding or against the homestead. But this, I believe, is a separate question.

Paragraph 2 of the circular letter of the Government of Bengal No. 9T.—R., dated the 5th June 1884.

50. As far as my knowledge goes, the local custom of this munsifi or this district does not any way recognise some right in a ryot to his holding independent of the statutory occupancy right.

Paragraph 3 of the above Government letter.

W. J.—Reg. No. 4611C—313—31-7-88.

No. dated Gaibandha, the July 1884.

From—Baboo Krishnadhan Chaudhuri, First Munsiff of Gaibandha, Rungpore,
To—The Offg. Secretary to the Government of Bengal, Revenue Department.

With reference to your land revenue circular No. 9T—R, dated the 5th June 1884, calling for my attention to the revised Bengal Tenancy Bill, with the report of the Select Committee and the dissents published in the *Calcutta Gazette* of the 2nd April and following dates, and forwarding to me copy of a letter from the Government of India, No. 784 of the 5th May 1884, and of circular letter No. 3 T—R of the 24th idem, from the Government of Bengal, to the Commissioners of Divisions, on the subject of the Tenancy Bill, I have the honour most respectfully to submit the following report.

2. *Answer to 1st question.*—The revenue officers ought to be empowered to arrange for cutting of irrigation channel, the distribution of water, and the payment of compensation. Otherwise the system of irrigation would be altogether a failure, for some would wish for irrigation of their lands, while others will not consent to it.

3. *Answer to 2nd question.*—It is essentially necessary that the summary sale procedure should be applicable to dependant taluqs. Otherwise the zemindar could not be responsible for the payment of revenue, for the realization of which he is provided with no easy means. Particularly the zemindar has no corresponding interest for his responsibility. Indeed, very great benefit both to the zemindars and the tenure-holders would accrue if the modified putni procedure be applied to these tenures.

4. *Answer to 3rd question.*—The summary sale procedure can be made applicable also to the recovery of arrears of road cess and Public Work cess from rent-free tenure-holders.

5. *Answer to 4th question.*—There is no practise prevailing in my jurisdiction for *bastu* lands. I think the conditions attached to the right of occupancy right to be attached to every *bastu* land. Otherwise no persons would be safe in making a permanent residence. When the defaulters had other property, *bastu* land should not be sold beforehand in execution of decree for arrears of rent. *Bastu* land would be sold only when it is proved that such arrears could not be otherwise realized. The burden of proof in this case should lie on the land-holders. Tanks and gardens adjoining to a homestead should be considered as included within the *bastu*. If the *bastu* is settled along with other lands, in case of sale for arrears of rent, the holder of *bastu* will be entitled to hold only his *bastu* on equitable terms and in the settlement preference should be given to him. The conditions applicable to other *bastu* will then apply to this *bastu*.

6. *Answer to 5th question.*—The provisions contained in section 214 ought to be applied to similar tenures under other names. Otherwise such lands would scarcely be settled and brought under cultivation. The provisions should be applicable to every division, not in Chittagong Division alone.

7. *Answer to 6th question.*—I do not know what is guzashta and gera holdings.

8. *Answer to 7th question.*—It is possible to improve the price list by filing by the local traders of extracts from their purchase and sale-books, and price lists should be prepared from these extracts. Enhancement of rent based on such price list will be much more accurate.

9. Occupancy ryots should remain occupancy ryots, and ought not to be converted into tenure-holders under any circumstances.

10. There should be no difference between the ryots and tenure-holders at fixed rates; the statutory presumption ought to be retained, otherwise in reality there will be no tenant at fixed rates. A certain time should be allowed for registration of the tenures.

11. There is no objection against the definition of "estate," but occupancy right ought to be extended in the same village only, and not to the same estate. The date ought not to be changed, as otherwise the survey records will all become useless.

12. The onus of proving the right of occupancy should lie on the party possessing the right, for it is easier to prove one's own right then to prove the adverse right of another.

13. As regards enhancement of rent, after an enquiry into the gross produce of the land, the price of it should be ascertained from the price list. The cost of cultivation, which should be also ascertained by enquiry, should be deducted from this price, and the remainder should be given partly to the zemindar and partly to the tenant for their respective interest.

14. The provisions of the section 42 have been judiciously made. If without taking into consideration the previous rate of rent, the rate of rent payable by an occupancy ryot let into land hitherto held by a non-occupancy tenant be fixed in conformity with the rate paid by the surrounding occupancy ryots, the zemindars will be unwilling to let them into their lands. This will indeed prove injurious to the occupancy ryots. The provision of section 43(*a*), about having regard to the rate of rent paid by the surrounding occupancy ryots. When an enhancement is claimed, provision should be made that no regard is to be had, in case of enhancement, to the rate paid by such occupancy ryots.

15. As to the grounds of enhancement, the crops grown in particular lands ought to be taken into consideration, and not the staple crops of the district. In enhancement it will be also necessary to call on the local traders to furnish extracts from their purchase and sale-books as stated before. Exceptional cases of good or bad years should be avoided, if the average price for five years preceding be taken into consideration, there can be no reliance as regards accuracy of the price list furnished at present.

In commuting grain rents to money rents, the average price of the grains received as rent by the landlord in five years passed should be fixed to be the money rents.

17. The rate of rents payable by a non-occupancy ryot on his first entry upon a holding should be fixed as what he contracts with the zemindar. Otherwise in such case if there be provisions for fixing judicial rent, it will affect the interest of both landlord and tenant according as the case may be.

18. The protection given to under-ryots in Chapter VIII is sufficient.

19. (Chapter VIII.) These crops may be kept with landlord or tenant according to local custom.

20. As to the question of abandonment by a tenant, the manner in which the Select Committee have attempted to solve, it is suitable.

21. The powers conferred or conferable on the revenue officers charged with the preparation of the record of right are, in my humble opinion, sufficient, and the powers which the Local Government is competent to confer upon them under section 223 will be sufficient for the purpose.

22. In framing records of rights, the revenue officer will dispose, in the manner provided, of every class of cases which he is capable of disposing of, and in case of special difficulty or importance, he will refer it to the ordinary civil courts.

23. As regards distraint (XIII), the provisions made in the Bill is not, in my humble opinion, unfair or unjust.

24. To institute a collective suit against any number of tenants belonging to one village by means of a single plaint will not, as I consider, work well in practice. Only in suits for arrears of rents a general reduction in stamp duty is desirable, and when any number of suits are instituted by one plaintiff against any number of defendants belonging to one village on the same date, the same process fee should be chargeable as is now required for any number of defendants in a single suit.

25. As regards service of summons, the provisions made in the Bill are facilitating, but as to the speedier and cheaper method of recovering arrears, I have already suggested about the latter in paragraph 25, and have to say that to press upon the local officer for speedier disposal of suits is the only means for attaining the former object.

26. The provisions of the section 164 should be omitted from the Bill, as otherwise much difficulty will occur and inconvenience be caused.

27. The provisions made in the Bill about the procedure (XIV) are in general sufficient.

28. Right of occupancy should be transferable.

29. The section 73 (*b*) should be omitted from the Bill, otherwise many tenants with an object to harass his landlord will deposit rent on the pretext that he believes that the latter won't take rent and give a receipt.

30. I am unaware as to the existence of any practice which prevails in my jurisdiction of exempting, under any circumstances, the *bastu* land from sale, when the occupancy right in the arable portion of the holding is put for sale in execution of a decree.

31. I am unaware as to the existence of any custom which in any way recognizes some right in a ryot to his holding, although he has not held it for 12 years, but acquired a statutory, right of occupancy.

32. In conclusion, I beg to state that the provisions made in section 32 of giving the right of pre-emption to the landlord is not in my humble opinion unjust, but where there is a share holder of the tenant, the right of pre-emption ought to be given to him.

E. D'S.—Reg. No. 4612C—313—30-7-84.

No. 116, dated Serajgunge, the 3rd August 1884.

From—Baboo Kailas Chandra Majumdar, Munsif of Serajgunge,

To—The Secretary to the Government of Bengal, Revenue Department.

With reference to the Government circular No. 9T—R, dated the 5th June last, calling on me to submit my opinion on the revised Bengal Tenancy Bill, I have the honour to submit as follows.

CHAPTER II.

Paragraph 4 of the letter from the Government of Bengal to the Commissioners of Divisions.

(a) The definition of ryot in section 5 (3) may cover all classes of ryots—those holding under unregistered lakhirajdars as well as under the holders of revenue-paying lands, if the word "tenure" includes all interests in land whether rent-paying or lakhiraj (other than estates, as defined in chapter I).

This is the form in which the word "tenure" has been defined in Act VII (B.C.) of 1868. To remove difficulties, I think that a definition of the word "tenure" should, if possible, be given in the Bill. The description of "tenureholders" given in the Bill does not appear to be clear on the point.

In the case of Nilmony Sing Deo *versus* Chandra Kant Banerjea, I. L. R. 2, Cal., 125, Justice Glover says: "It may be that the defendant has cultivated or does cultivate some part of his holding, but this would not deprive him of his position as the holder of an intermediate tenure."

In the Full Bench case Shyam Chand Kundu *versus* Brojo Nath Paul Chouduri, 12 B. L. R., 484, "tenure" has been described "to be not the right or interest of any person in the land, but the holding or the interest which has been created by the lease."

In the case of Kristendra Nath Ray *versus* Aena Bewa, I. L. R. 8, Cal., 675, it has been held that the word "under-tenure" "is not confined to a tenure intermediate between the zemindar and the ryot, but includes any tenure which, by title deeds or the custom of the country, is transferable by sale."

If the cultivation of some part of the holding by the tenant himself does not affect the position of the holder of an intermediate tenure, I think that the definition of the word "tenure" as given in Act VII (B.C.) of 1868, with certain changes, may cover the classes of tenureholders, who are the creatures of the present Bill.

I venture to define "tenure" in the following way:—

The word "tenure" includes all interests in land, whether rent-paying or lakhiraj (other than estates as defined in chapter I), which are intermediate between the proprietor and the ryot, and which by title deeds or by the custom of the country are transferable, whether some part of the holding is cultivated by the tenant himself or not.

(b) Ryots who call themselves gantiders in the district of Jessore, and the jotedars of these districts, with a holding of 50 or 60 bighas, do claim the privileges of a middleman and act as middlemen generally do, although under the existing law they do not possess any right superior to the right of occupancy. These ryots are generally rent receivers, and taking the status of these ryots as my guide, I think that the presumption in section 5 (5) is a fair presumption.

(c) To protect the sub-lessees of ryots, sub-letting should be discouraged. The scheme of conversion may discourage sub-letting, but the practicability of the scheme is, I think, doubtful. As provided for in the Bill the status of the converted tenureholders, with regard to the important question of enhancement, remains, even after the conversion, the same as before, and the converted tenureholders are put to a worse position when, with their own conversion, their under-ryots are also converted into occupancy ryots.

The disadvantages to which these converted tenureholders will think they will be put to, if the under-ryots are converted into occupancy ryots, will preponderate, and the advantages with regard to pre-emption and distraint will not be a sufficient inducement to them to see that their status is improved.

In districts where the registration of deeds is not even now resorted to, although the law is well understood by the people for a period of 20 years, if not from before, section 37 will have no effect if the registration is left optional with the ryots.

To make the provision workable, I think that the registration should be made compulsory, and that a penal clause should be attached to the section for its compliance.

CHAPTER III.

In the case of Rani Shurnamoyee *versus* Gouri Pershad Dass, 3 B. L. R., 271 (a suit for enhancement of rent payable by a talukdar), 6½ per cent. was, under the circumstances of the particular case, allowed to the talukdars for profits, but this was not considered to be enough to enable a man to live comfortably and to provide against bad seasons and bad tenants. Under the case laws a reasonable profit is to be allowed to the talukdars, but a profit less than 10 per cent. cannot be held to be reasonable.

From the facts of the case Mohini Mohan Ray *versus* Ichamoyee Dassi, I. L. R., 4, Cal, 612, it appears that there may be circumstances in any particular case under which the enhancement should be gradual. A provision to this effect therefore should find a place in the new law.

Difficulty, however, may rise as to from what date the period—10 years—mentioned in section 10 is to run, if the enhancement be gradual. The portion "during the 10 years next following the date on which it has been so enhanced" appears to be ambiguous. It is not clear whether the 10 years is to run from the year in which the increase of rent commences, or from the year in which the limit is reached.

It will, I think, be convenient if "customary rate or pergunnah rate" (pergunnah rate being more easily ascertainable) is substituted in the place of "customary rate" in section 7.

CHAPTER IV.

With reference to this chapter it is said that section 23 with the 20 years' presumption will tempt ryots to defraud the zemindars of their just rights. In practice, however, this is not found to be the case. In many parts of the country, particularly in the eastern districts, the practice of granting printed rent receipts has not yet become common. True, that in suits for enhancement this presumption is generally pleaded by the ryots, but the ryots seldom plead it successfully. Still there are few ryots who preserve their rent receipts with care, and there are few enhancement cases in which the zemindars have found difficulty in rebutting the presumption, or have failed to succeed simply on this ground. With collection papers, which the zemindars keep as a rule, they come prepared to meet the ryot's case, and it is the ryots who generally suffer. Even now the ryots are as ignorant and careless as they were before. The ryots therefore do stand in need of some protection, and it will operate hardly against them if the presumption is now removed from the Bill.

The currency of presumption is limited in the Bill, so that no good zemindar is likely to suffer if he takes care to have the tenancies registered in the way provided for in the law. To limit the presumption in any other way will be most disastrous to the ryots.

The zemindars are the most intelligent of the classes, and now that the presumption is already in force for more than 20 years, it is easier for the zemindars (who are possessed of better materials) to rebut the presumption than for the ryots to prove their right by proper legal evidence.

CHAPTER V.

According to sub-section (1) to section 25 a settled ryot acquires the right of occupancy in respect of all lands which he may hold in a village or estate, whether belonging to the same or different zemindars

The right of occupancy has thus been made personal to the ryot, but this change in the law I think will press with some degree of severity upon the zemindars, and give undue advantage to the ryots.

A non-occupancy ryot by buying one piece of occupancy holding in the village or estate will thus become an occupancy ryot with respect to all his holdings; and if the village or estate belongs to several zemindars, which is not unusually the case, all occupancy ryot holding under one zemindar will, under the Bill, acquire the right with regard to all lands which they may acquire under other zemindars.

The sub-section may be modified in the following way without injury to the just rights of the ryots:—"A settled ryot of a village or villages shall have a right of occupancy in all lands in the village or *villages* which he may acquire under the same zemindar under whom he has an occupancy right."

The lands of an occupancy ryot do not generally extend over a pergunnah when the "estate," as defined in chapter I, is a pergunnah or the share of a pergunnah. To give him this right in the Bill will be giving him a right which he cannot reasonably expect to have. A word having a more limited signification should, I think, be substituted for the word "estate."

Sub-section (2) to section 26 is a new legal presumption in the Bill, but this presumption, I think, will operate hardly against ordinary unregistered lakhirajdars and small tenureholders who do not keep regular account books of the collections they make, and also to new purchasers at auction sales.

In practice we see that in the case of lakhirajdars and small tenureholders who are females or minors they are put to the greatest disadvantage when the ryots try to defraud them of their just rights by setting up false defences. The presumption is very wide, but for the good of the ordinary tenureholders I think that it should be placed under certain restrictions. The section may be modified without injury to the rights of ryots who have real rights of occupancy in lands if it is worded thus—"If in any proceeding under this Act it is proved or admitted that a person holds land as a ryot for a period above six years, it shall, &c."

To make the definition of settled ryot more clear, I think that the case law, I. L. R., 3, Cal., 560, to the effect that "a ryot occupying and cultivating land for more than 12 years under a landlord who has no title to the land, nevertheless acquires a right of occupancy," should be added to sub-section (3) to section 26.

In the case of Sreemutty Alladinee Dassi *versus* Sreenath Chunder Bose and another, 20, W. R., 258, it has been ruled that "a co-sharer in an estate who cultivates a portion belonging to himself and the other shareholders should *pro tanto* be considered their tenant." If a tenant, he may in course of time acquire a right of occupancy in the land he holds. Section 29 (1) provides that this ryot should have a right of occupancy, and I think that this is in accordance with the ruling cited above.

Section 28 applies to the case of landlords who are not part owners, but are the proprietors of the entire holding. The one therefore does not conflict with the other.

The second part of section 29 (2) is in accordance with the case law, 1, W.R., 76, which rules that "a ryot does not lose his right by subsequently taking the land in farm." But to make the first part of the sub-section clear I think that it should be made to accord with the case law, 25, W.R., 503, to the effect that, if before the farming lease the ryot did not acquire any right of occupancy, the ryoti interest must remain unchanged in character during the currency of the farming lease.

I think that the following should be added to section 29 (2) :—

A firm of capitalists cannot by any length of occupation acquire rights of occupancy in a village or estate, I. L R. 4, Cal., 957.

To prevent unnecessary litigation, I think that section 31 (*a*) should be made a little more definite.

As to the question of transferability of the occupancy holding, I think that when such holdings are, as a matter of fact, daily sold and bought by cultivators in every district in Bengal, to facilitate the extension of this right is simply to embody into law what is a recognized custom in every district in Bengal.

The procedure laid down in the Bill is, however, elaborate, and I think that it will make transfers almost impossible. Under the Bill in every case of private transfer a ryot is to make the transfer through the court; but a ryot who lives at a distance and wishes to sell a bit of land on urgent emergency will not have time to go to court nor to wait for the time prescribed in the Bill.

Under the existing practice the ryots do sell and buy occupancy holdings whenever they wish, but no complaint on the ground that this sort of free transfer affects their interest has ever been made by the zemindars On the contrary the zemindars do generally recognize these transferees as tenants on receipt of a certain sum as *nuzzur*.

If the recognized custom is embodied into law, free sale should be allowed, and the ryots should have an unrestricted right of sale. I think that free sale may be allowed, and at the same time right may be given to the zemindars to question the sale and to have the sale cancelled, if after the sale the zemindars find that the ryots have acted fraudulently or that the sale does affect their interest in anyway. Without this any provision to restrict the right by giving the right of pre-emption to the zemindars before the sale, will, I think, make the scheme practically almost unworkable.

If the pre-emption sections are retained in the Bill, it will be difficult to apply them in practice, if, when the holding is held under several sharers, each of the sharers claim the right of pre-emption severally. When this is the case, how will their claims be decided? The Bill is entirely silent on the point.

If section 42 remains as it is, the omission of section 56 of the former Bill will, I think, have a serious effect upon the prevailing rate.

The danger is real, and to meet it I think that one or the other of the two following must be provided for :—

(1) If the other provisions are left as they are, the maxima rates of rent payable by the occupancy and non-occupancy ryots are to be made equal, so that the landlord may not have the liberty to let the land which falls into his hands yearly to non-occupancy ryots at rates above the prevailing occupancy rate; ore

(2) If the maxima rates are not made equal, provisions should be made to prevent, a considerable quantity of ryoti land falling yearly into the lands of landlords. This may be done if the pre-emption section are withdrawn and the surrender and abandonment sections made more strict. But with respect to lands which must inevitably fall, it should, I think, be provided that the first ground of enhancement is not to include rates framed under section 42(1).

The first one is, however, the easier of the two.

With regard to the question of enhancement out of court, I think that to prevent litigation the tenant may be let free to contract up to the maximum limit to which rent can be enhanced in a court, but as in practice it has been found that the tenants are not always free agents in entering into contracts with their landlords, some provision to check the contracts is I think necessary.

If officers who are to prepare the record of rights or officers more responsible than the present rural sub-registrars are vested with the powers of registering these contracts, I think that the contract may be properly checked, and the inconvenience apprehended may be removed. With a proper check on contracts, the provision as to enhancement out of court may work well.

Under the existing law the first ground of enhancement, as explained by the case laws, is almost unworkable in practice.

To make out this ground the facts to be proved are not only the prevailing rate, but that that rate is paid by ryots of the same class for similar lands and with similar advantages; but in very few cases the zemindars can satisfy the requirements of law by proper evidence. Cases are, however, rare in which the zemindars have really succeeded to prove this ground by the production of false evidence Under the Bill as it stands there will be two classes of occupancy ryots, one holding at the old prevailing rates, and the other holding at rates framed under section 42 (1); so that under the Bill th

prevailing rate may to a certain extent be definite and ascertainable, and this being so the abolition of the ground may tell unfairly on the zemindars.

The application of section 46 (6) will be most difficult if the portion—"the increase likely to be caused by the improvement"—is retained in the Bill. This is an uncertain fact which cannot be easily ascertained. If in any case the possibility is the only point to be taken into consideration in determining the amount of enhancement, it will be most unsafe to fix a certain amount simply on the ground of possibility. If this portion is taken away, the portion in rule (IV)—"the ability of the land to bear a higher rent"— which is equally vague and uncertain, is not necessary to be retained in the Bill. To make this ground of enhancement workable, I think that section 46 (6) should be made more certain, and that it should be provided that as a rule the landlords are not to have the benefit of this ground, unless and until some increase has actually been caused by the improvement.

The Bill mentions certain facts which the courts are to take into consideration in determining the amount of enhancement on the ground of landlords' improvement, but what rule of proportion is to be followed in fixing the amount has not been provided for in the Bill.

The evidence to prove the possibility of increase and the ability of the soil to bear a higher rent will be most uncertain and vague, and on such evidence it will be very difficult for courts to come to a right conclusion.

To remove difficulties I think that a certain rule of proportion should be provided for in the Bill.

In determining the amount of enhancement on the ground of rise in prices the cost of production may be taken into calculation, although by the Full Bench decision in the great rent case no ryot is entitled to any deduction on this account.

The cost of production was taken into calculation in the case of Joment Mundul *versus* Shoorender Nath Roy, 25, W. R., 391, and I think that this should be done when the cost rises in a greater ratio.

There being more demand at the head-quarters, the fluctuation of prices at head-quarters is not the true index. At these places the prices are invariably high. List of prices are, I think, to be made from the account books of the mofussil mohajuns.

Under the existing law the question of enhancement of rent of bastu lands arises only when the bastu forms an integral portion of the occupancy holding, or is held as a ryoti tenure by persons engaged in agriculture.

The law relating to homestead lands, as it now exists, is as follows:—

In the case of W. G. N. Pogose *versus* Raju Dhopee, 22, W.R., 511, it has been ruled that "where the tenure or bastu is a ryotwari tenure, these bastu lands do come within the operation of the Rent Law."

In 24, W.R., 153, it has been held that "when the principal subject of the entire occupation is bastu land the residue (if any) of the holding being merely subordinate, the Small Cause Court has jurisdiction.

"But when the principal subject of the entire occupation is agricultural land, the building or buildings being mere accessories thereto, the Small Cause Court will not have jurisdiction."

Under the case laws therefore bastu lands in order that they may come under the Rent Law must be accessories to the arable portion of the holding, or in other words, the origin of tenancy with regard to these lands must be for agricultural purposes.

It is when the bastu land lies in a village and forms part of an agricultural holding that it is liable to enhancement under the existing law (3, B.L.R., App. 133).

When the origin of the tenancy can be known the application of the law as it now exists is not very difficult (I.L.R, 8, Cal. 960).

Difficulty arises when the origin of the tenancy cannot be known, and in course of time the bastu land lying in an agricultural village becomes the principal subject of the entire occupation and the arable portion accessory to the bastu.

In I.L.R., 3, Cal., 696, it was laid down that when the tenant did not hold under an express agreement he would be treated as a tenant-at-will, and would be liable to be evicted upon a reasonable notice to quit.

This ruling made the law clear, but by this the ryots were left entirely at the mercy of their landlords. Numerous cases of eviction were instituted and real hardship did ensue after this ruling was passed.

Subsequently the law was modified by the rulings 10, C.L.R., 25, and I. L. R., 8, Cal., 960, and as the law now stands a ryot acquires a right of occupancy in the bastu land if it is shewn that the land was originally granted for agricultural purposes and a permanent tenure in it when the land is shewn to have been let for building purposes.

Cases, however, generally arise in which the purpose for which the land was originally granted cannot be ascertained and for the protection of ryots holding such homesteads I think that there ought to be some provision in the present Bill.

If any local custom is to regulate the incidents of tenancy of these homesteads the existence of such a custom will be a matter of proof, but this the tenants will find it very difficult to prove by evidence. The tenants of these homesteads will thus be as unsafe as they are under the existing law.

Within my experience I have not seen that bastu land forming part of an occupancy holding is exempted from sale when the occupancy holding is sold in execution of a decree

for rent. At these sales the entire holding is sold irrespective of the question as to whether any portion of the holding is arable or bastu The holding cannot be sold by parts because no division of the holding can be made by the zemindars with the consent of the ryots.

At other sales the bastu may be sold separately, but as by recognizing the purchaser a division of the holding is recognized, the zemindars do not generally recognize the purchaser as a tenant. If they do recognize, they recognize the purchaser as a joint tenant.

If by butwara or sale of the superior tenure the occupancy holding is divided, apportionment of rent is now made according to the principle laid down in the case law, I. L. R. 5, Cal., 902, and the holding which was originally one comes to be held as separate holdings according to the several parts into which the holding is divided by the butwara or sale, but without affecting the conditions under which the holding was originally held.

In these districts the bastu of a cultivator is generally held as accessory to the arable portion. It is not held as a distinct tenure, nor is it held on conditions separate from those which attach to the holding as a whole.

In case of females, minors, &c., it is generally the case that for want of means or of proper men to manage their properties, they, with the consent of the zemindars, surrender the arable portion of the holding to the zemindars and occupy the bastu as a separate tenure, but subject to the same conditions under which the occupancy holding was occupied by them before In respect of bastu lands held in this state for a long time, the origin of tenancy cannot be easily ascertained, and the ryots holding such homesteads are under the existing law quite helpless.

If the surrender of the arable portion which the zemindars now ordinarily recognize is embodied into law it will be a boon both to the zemindars and ryots, and then the necessity for making some express provision for the homestead of ryots will be quite apparent.

Under the existing law land let for one purpose cannot be used for a different purpose without the consent of zemindars, so that if a ryot converts an agricultural holding into a bastu one, he is liable to ejectment under the existing law.

Unlike the present law the Bill gives right to occupancy and non-occupancy ryots to erect suitable dwelling-houses, &c., on portions of the holding they occupy. To prevent interference of the zemindars with these sites of the ryot's house, and for the safety of the ryots therefore, some express provision with regard to the rights of ryots in bastu lands should be made in the Bill. To leave this to custom will be most unsafe to the ryots.

CHAPTER VI.

In these districts there is no local custom recognizing any right in the non-occupancy ryots. These ryots are now left entirely at the mercy of their landlords and are without any remedy if they happen to fall out with their landlords on any ground. The law that "where a tenant has not any gozastah right, or any right either of occupancy or of fixed rent, his tenancy may be determined at any time by reasonable notice to that effect" (21, W.R., 268) strictly applies to the non-occupancy ryots of these districts.

In the eastern districts estates are generally let out in ijara. New ijaradars or other leaseholders who have the rights to collect rents try the best means in their power to realize something over and above the legitimate rent payable by the ryots, and whenever the ryots do not accede to their call, they deal with the ryots in any way they like, serve them with notices to quit, and if any class of ryots is the most oppressed under the existing law, it is the non-occupancy ryots.

In many districts in Bengal, if an estate is let out in ijara or in patni the setlement is made at the most exorbitant terms. A certain big amount is paid as selamee, and the *hustabood, i.e* the total amount of collection made by the zemindar is made the jama payable by the leaseholders. *Primâ facie* therefore the bargain is to the disadvantage of the lessees. A lease taken under such terms cannot be made profitable unless something over and above the actual rent is realized from the ryots. What can then be the object of the ijaradar or patnidar in taking leases on terms under which they are no better than mere collecting agents. The object is purely to profit at the expense of the ryots. The non-occupancy ryots are the persons then looked to as best suited to satisfy their object, and the result is that under the existing practice the non-occupancy ryots are dealt with by leaseholders at their discretion.

If the same freedom of contract is allowed in the present Bill, and at the same time the term of tenancy is limited, the position of these ryots will be worse than it is under the existing law.

To improve the status of the non-occupancy ryots therefore, the power now allowed to the zemindars to deal with the non-occupancy ryots at their discretion must be checked, and a certain limit on rent, not above the occupancy rate, should be provided for in the present Bill.

CHAPTER VII.

Under-ryots are creatures of the present Bill. They have got a certain legal status, which they do not possess under the existing law.

I doubt, however, that section 38 of the present Bill will have the effect of discouraging sub-letting if the provisions of section 37 are not availed of by the occupancy ryots. To these it will be a gain if the leases are to remain valid for short terms only. Limitations on rents payable by under ryots are therefore desirable.

Although the word tenant, as defined in chapter I, is wide enough to include a talukdar, but to prevent ambiguity I think that section 73 relating to deposit of rent should be expressly extended to patni taluks, as under the existing law, the sections on deposit have been so extended by the case law, 22, W. R., 431.

In practice it is generally seen that when a certain sum is carried to the payment of back rents, which might remain due for more than one year, the receipts only shew in a lump sum the amount which has been credited as back rent, without specifying the particular year or years for which the arrears have been so paid. To make things clear and to make the counterfoils of receipts the best evidence of the jama actually paid by the ryots in the previous years, I think that a clause to the effect that "if the arrears or back rents due be for more than one year, the year or years to the account of which the payment is credited should be distinctly shewn in the receipts" may be conveniently added to section 69 of the Bill.

Section 78 of the Bill is the same as section 52 of the present law. By the case laws, 12, B. L. R., 439, Privy Council and I L. R 9, Cal., 88, section 52 has been made applicable to cases where the right to cancel a lease arises under the provisions of the Act, as well as to cases where the right arises under agreement between the parties."

I think it will be convenient if section 78, paragraph 2, is made to apply to the cases of tenureholders and holders of transferable holdings also.

CHAPTER IX.

To prevent a large quantity of ryoti land falling into the hands of landlords by the abandonment of holdings, and to remedy the malpractice which now exists, the provisions relating to abandonment should, I think, be made a little more strict, and the arbitrary power now exercised by landlords should be checked.

If when the right of re entry accrues the landlords are made to go through certain preliminaries before they can enter on the holding, I think that the danger apprehended may to a certain extent be removed.

In the case of surrender the tenant is required to give notice to the landlord through the court, and the land will be taken as surrendered after a certain time prescribed. So in the case of abandonment, the landlord before taking a certain piece of land as abandoned may be required to notify the fact of abandonment to the court, have a notice served on the tenant through the court, and then after a certain time to be fixed re-enter or settle the holding with others.

By this the exercise of arbitrary power on the part of landlords may be checked, and the number of cases of abandonment may be made far less than it is under the existing law.

CHAPTER XII.

Under the existing law waste lands lying within a zemindari do come under the head of private lands of zemindars.

CHAPTER XIII.

The law of distraint is a powerful instrument of oppression in the hands of landlords. In practice it has been found that whenever the benefit of this law is availed of by landlords many an act of oppression and many a malpractice are carried on under the authority of this law.

The right of distraint, however, is exercised by landlords in exceptional cases only This law therefore, although said to be the only sure and inexpensive process for the collection of rents is not availed of by the landlords ordinarily. If statistics are taken from the mofussil courts, it will appear that there are districts in which this method is not at all adopted by landlords for the speedy realization of rent. If in any district there be cases of distraint, the number will be found to be insignificant in comparison with the number of suits instituted for rent. Practically therefore this law has no application. The landlords can and do generally manage without it, and if so, I do not think that the landlords would lose any thing if this law is not retained in the Bill.

Attachment before judgment may serve the purpose, and if this process is adopted instead of distraint, it can protect landlords against any loss that they might apprehend at the hands of designing tenants

The courts find great difficulty in applying this law in practice. In practice it has been found that in exceptional cases only, *i.e.* at the time when the ryots turn refractory, that this procedure is adopted by landlords, and that not for the purpose of realizing rent, but for the purpose of ruining the ryots who turn refractory. Now the landlords know it well that as by this process the ryots are ruined and their crops go for nothing, they adopt this as a means of ruining the ryots, and not as a speedy means of realizing rent The ryots are driven to the necessity of bringing suits for damages, but they find it very difficult to prove the real facts by evidence.

This coercive measure therefore, in whatever form it is framed, instead of being considered as a means for realization of rent is known as a powerful engine of oppression and annoyance in the hands of landlords. If this law is at all retained in the Bill to prevent it being abused, I think that some provision to safeguard it is necessary, and that it should be placed under certain restrictions. Without this the free exercise of the right is sure to increase litigation and put the helpless ryots into great hardship and inconvenience.

Whatever be the procedure laid down it is sure to work evil, if the free exercise of the right is allowed to landlords. From my own personal experience I know that under cover of this law the landlords commit the most daring acts of oppression with impunity, and that the poor and helpless ryots do not get sufficient relief in court.

It is true that in the case "of an improvident peasantry a remedy against the crop is a more humane process than a remedy against the land," but it is true in theory only—not in practice. In practice this remedy has been found to be the most inhuman and oppressive, and no provision in the law can make it better if the relation which now exists between the landowning classes and the ryots does not undergo any change.

Now the relations between the landowning classes and the ryots are not of a cordial description, and in this state of things, in whatever form the law is framed, the measure is not to work well without producing some degree of hardship upon the poor ryots.

CHAPTER XIV.

Now, in practice, if a landlord institutes 20 separate suits for rent against 20 tenants residing in the same village, the suits, though instituted separately, are, by consent of the parties, tried together. The evidence taken in one case is by consent admitted as evidence in all, and one judgment governs them all.

If therefore the landlords are permitted to institute a collective suit against any number of tenants belonging to one villlage, it will only embody inot law what in practice the courts now do by consent of the parties. Section 28 of the Procedure Code does in a manner support this sort of procedure, and if collective suits are allowed, they can most conveniently be tried in the same way as contribution suits are now tried under the Procedure Code.

With the plaint, the collection papers, particularly the counterfoils of receipts, are to be filed to prove the jama and the arrears due.

Even under the existing procedure the plea of non-service of summons is not very common. To make, however, the service more sure, I beg to suggest the following: –

The summons to be served in the same way as it is now done, with this modification that if the summons cannot be handed over direct to the tenant or his agent, the peon should, in addition to what he now does, bring the signatures of three substantial persons residing in the neighbourhood in attestation of the service having been made on the spot.

If the suit be a simple suit for rent fixed for final disposal, the procedure will be that the defendants will not be heard in defence unless they pay into court the amount (if any) which they consider to be due by them to the plaintiffs at the time of such payments.

In enhancement cases and in suits in which issues are to be framed, the procedure cannot be made shorter than that which now exists.

Written statements should, I think, be allowed in cases like these.

In such suits the defendants are not to pay into court any sum unless their liability is finally ascertained by the court in their presence.

After the suits are disposed of, the decrees will be drawn up in the same form as they are now drawn up in contribution suits.

The certificate procedure cannot be adopted, because in the case of ordinary landlords no liability can be properly ascertained without evidence being gone into in the presence of the tenants, but the case is otherwise when the estates are under the Court of Wards and managed by responsible officers of Government.

CHAPTER XIX.

Under section 222 of the Bill the co-owners of an estate or tenure are to act collectively or by common agent, but there is no provision in the Bill to meet the cases of co-sharers who under the existing law act separately. The effect of decrees obtained by co-sharers in cases in which they act separately is also not provided for in the Bill.

Suits against agents or the sureties of such agents, which now come within the operation of Rent Law, also find no place in the present Bill.

J E. S.—Reg. No. 4999C—327—7-8-84.

No. A, dated Mozufferpore, the 22nd September 1884.

From—Baboo Bhugobutty Churn Mitter, Munsiff of Mozufferpore,

To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your circular No. 9T—R, with enclosures, I have the honour to submit that the procedure sections of the Bill require no modifications just at present. They seem to be workable, and the finality given to judgments in petty cases meets with approval. In my humble opinion the filing of boundary with the plaints should not be made compulsory. Petty suits to recover arrears of rent (in which the juma is not disputed) should not be made complicated by questions about correctness or otherwise of boundaries of the lands the rent whereof is sought to be recovered. In such cases only the number of Government survey will suffice.

On enquiry from old-standing pleaders I learn that there is no local custom here recognizing any right in a ryot to his holding occupied for *less* than twelve years. In my experience also I did not find the existence of any such custom. If the payment of rent is withheld, such ryots are ejected by the zemindar. But not so in the case of homestead or *gharary* and *bary* land as it is called here. Such lands are generally rent-free. no ground-rent or *kathiari* being paid for it, especially in the case of high-caste men such as Brahmans, Rajpoots and Kayests. The low-caste people render some sort of service in lieu of payment of rent. But in cases in which homestead lands are rent-paying, the malik has not the power to turn out the recusant assamees without the aid of a court of law. He has to sue them for arrears and in execution of his decree to sell their houses, though this is seldom done. The bastu land is generally exempted when the occupancy right in the kasht is put up for sale. But I do not think there is any well-established custom of the sort.

2. The Tenancy Bill has undergone material alterations, and the present Bill as recast and revised by the Select Committee is decidedly an improvement upon its predecessors. Throughout the Bill a desire to do even-handed justice to both the zemindar and the ryot is apparent, and every possible restrictions to guard the poor ryots from the oppression of their rich landlords seem to have been imposed. The provisions generally appear to be good and beneficial, but there are certain matters which call for comment.

First—Clause 3 of section 5 seems to be defective. It does not include those ryots who cultivate and hold lands in rent-free mahals under settlement from lakhrajdar, jaigirdar, &c., as also the tenants of those maliks who did not possess entire estates at the time of the Permanent Settlement, and whose mahals therefore were made subordinate to the parent estate or zemindari in respect to the payment of Government revenue.

Section 5, clause 5, is open to objection. Ticcadars, mahajans and land-jobbers can in collusion with refractory ryots attain to this position of talookdars without any great difficulty to the detriment of both the malik and the ryot. That part of the definition of a "settled ryot" which confer on a ryot holding land (how infinitesimal soever it may be) continuously for 12 years the status of settled ryot in regard to other lands of larger areas held for a shorter time, under a pattah even providing against the accrual of a right of occupancy is objectionable.

Second—Further restrictions should be imposed upon the ryots' power of transfer. As a class of people they are most improvident and thoughtless, and a marriage or a saradh will in no time convey wholesale all their lands either to the mahajan or land-jobber and reduce them to the position of day-labourers. Again, the provisions of the Bill alone will not sufficiently protect the interests of the landlords against the refractory tenantry colluding with the malik's bitterest enemy solely for the purpose of annoying and harrassing him. The preemption clause may, with advantage, be made applicable to all kinds of ryots and tenure-holders.

Third—The position and status of the *khoodkast* ryots and of the tenants of malik's *zeraits*, *seer*, and *khamar* lands should be more clearly defined.

Fourth—The rules laid down for enhancement of rent of occupancy ryots are rather intricate, and it is doubtful how far they will prove workable.

Fifth—A long-felt want is attempted to be removed by the introduction of the chapter on "record of rights;" but at the same time the contemplated work is sure to take a long time to accomplish. Moreover it is feared that, like the Land Registration Act of 1876, it will prove a fruitful source of litigation for years to come, and to a great extent be the indirect cause of disturbing the friendly relations existing between the zemindar and his tenantry.

Sixth—The position of the putwari should undergo some change. He should be either made entirely subordinate to the zemindars whom he serves, or be treated as a Government servant to all interests and purposes. Much mischief is done by his anomalous position. He should be made personally liable at least for preparing false and incorrect village papers and granting false rent receipts, and a zemindar should not be made to suffer unless it is proved that it was done with his direct knowledge. The introduction of printed receipt books with counterfoils and of compulsory pattahs and kabuliats should be insisted upon.

A. E. des.—Reg. No. 7396C—327—26-9-84.

NOTES ON THE REVISED TENANCY BILL, 1884, BY THE EAST BENGAL LANDHOLDERS ASSOCIATION.

CHAPTER I.

PRELIMINARY.

Section 3, *sub-section* 1.—The definiti on of "estate" does not include such revenue-free or lakhiraj lands as are not entered in the general registers of the collectorate. This may not appear to be defective *per se*. But it excludes unregistered lakhirajdars from being "proprietors" (sub-section 2). Then if sub-section 3 of section 5 be taken into consideration with the above definitions, it will be apparent that an unregistered lakhirajdar cannot have a *ryot* as his tenant, nor can a tenant have the rights and privileges of a "ryot," even if he holds lands for the purpose of cultivation, when his immediate landlord is an unregistered lakhirajdar. As an unregistered lakhirajdar is not a proprietor, and as he need not be a tenureholder, the difficulty arises as to whether a tenant holding land under such a lakhirajdar can have the rights and privileges of ryots, even though he be holding the lands for the purpose of cultivation. It is submitted that the proviso contained in sub section 3 of section 5, taken in conjunction with the above mentioned definitions of "estate" and "proprietor" will preclude such tenants from enjoying the rights and privileges of ryots.

There is a further objection to the definition of "estate" on similar grounds. It does not include such khas mehals as belong to Government and which are not entered in the Collector's general register as revenue-paying lands.

The proviso to this section again expressly excludes also such Government lands as are entered in the general register of the Collector and thereby curtails the definition of estate as given in clause *c* of sub-section 2 of section 3 of the Land Registration Act, VII of 1876, (B.C.).

The effect of this would be that Government will not be deemed a "proprietor" in respect of such lands, and the tenants holding lands for cultivation under Government will be excluded from the right of acquiring and enjoying the privileges of ryots by reason of the above mentioned provision in sub-section 3 of section 5.

The definition of "proprietor" is defective in other ways also. The word "owning" used in the above definition if meant "to be the owner of" in the common and ordinary acceptation of the word, then it is very doubtful whether the definition in question would include trustees and persons having a life interest only in the property, as well as *mutwallees* of *wakf* properties, *shebaits* of *debutter* estates, and managers of charitable or religious endowments, and such other persons as proprietors.

The definition of proprietor as given in the Bill prepared by the Rent Commission had the word "owner"; and the use of the word "owning" in its place is certainly no improvement. If the word "proprietor" has been used in the present Bill in the like sense as "owner" has been defined in the English Public Health Act of 1875, to which reference was made by the Hon'ble Mr. Ilbert when he introduced the Bill of 1883 in Council, and which says "owner means the person for the time being receiving the rack rent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at rack rent," then it is submitted that in order to avoid future doubts the definition of proprietor should be made as clear as is the like one in the English Act. On the other hand the definition in the Rent Commission's Bill clearly included in the category of proprietors not only a person who was a sharer in an estate but also a person who had "*an interest*" in an estate. Under the present definition it is doubtful whether a single individual out of a number of persons who jointly own an estate would be treated as a proprietor even separately.

Again, a person who as owner holds some specific lands in an estate or in any other way possesses an interest in the estate would have been recognised a proprietor under the said old definition. But it is very doubtful whether such a person may be reckoned as such under the present wording of this definition.

Sub-section 7.—The words "one set of conditions" in this sub-section are indefinite, and may raise difficult questions as to whether various parcels of lands constitute one holding or not though let out at different times.

CHAPTER. II.

CLASSES OF TENANTS.

Section 4.—In the classification of tenants it appears that tenants holding lands other than arable lands have been purposely excluded. Yet the provision contained in sub-section 5 of section 5 supposes the existence of such tenants, and gives them certain rights and liabilities.

Again, clause *b*. of sub-section 4 makes ryots at fixed rent or at a fixed rate of rent a distinct class of tenants. This is against the recognised *ideas* of the country in the matter of classification of tenants. These numerous distinctions and classifications will only complicate the system of the law without any adequate advantage being gained by any side.

Although the definition of tenureholders as given in the present Bill is an improvement on what is to be found in the preceding one, yet it is not at all precise The sub-section 4 of section 5 which tries to distinguish a tenureholder from a ryot instead of removing rather creates difficulties on that head.

The word "primarily" used in the definition of tenureholders, although put in to cover cases other than those expressly included by the definition, will ultimately raise many difficult questions and make the definition altogether indefinite.

If the definitions of tenureholder and ryot as given an the present Bill be admittedly faulty they should be set right instead of leaving the matter to be discussed and fought out in every case with *different* results.

If it be difficult for the Legislature to give a better and more precise definition of the two classes of tenants, it would be more difficult for the courts to apply properly such definitions in contested cases.

For reasons stated in these notes with reference to the definitions of estate and proprietor, sub-section 3 of section 5 should be expunged. The retention of this provision will be every injurious to the interests of ryots.

The presumption *provided* by sub-section 5 of section 5 is most objectionable irrespective of the question as to whether such a class of tenants as is mentioned in this sub-section should or should not be classed as a tenureholder. The provision for such a presumption will be a fruitful source of litigation between the landlords and tenants. It will do nobody any good, but will on the contrary create more indefiniteness in the status of the tenants. It will further create many anomalies. Some tenants holding more than 100 bighas of land will remain ryots Some having the same quantity of land will be promoted to the position of tenureholders on account of having sublet a part of their holdings; while others having the same quantity of land may remain tenants even after having sublet the whole of their holding as the presumption is of a rebuttable nature.

How the presumption may be rebutted it is not easy to determine.

The principles enunciated in sub-section 4 of section 5 for distinguishing a tenant from a tenureholder will not be of much use. Evidence as to the nature of the right of tenancy as originally acquired will generally be very meagre. Enquiry on this head will generally be unsatisfactory from the nature of things.

This sub-section is objectionable also on other grounds. It indirectly gives authority not only to non-occupancy ryots to sublet their lands, but even to tenants who are not ryots to do the same Although the present Bill does not intend to give rights of occupancy to tenants holding only pasture and such other lands, yet there is just a chance left for such a tenant to convert himself into a tenureholder, and thus secure a position above an occupancy ryot if he can obtain a holding of more than 100 bighas and then sublet the whole or a part of this holding.

The creation of a new class of tenureholders from out of tenants holding more than 100 bighas will be productive of great mischief. It will bring in a state of things wholly unknown in the country and without any advantage being secured to the zemindar: it will encroach upon his rights and privileges.

In short, the presumption is not at all a fair one. It gives an undue advantage even to ryots who have no rights of occupancy and to other tenants who have so long been recognized as tenants at will.

Section 11 of the Rent Commissioners' Bill had embodied a most objectionable provision, by which a new class of tenureholders were created for the country, and though that provision was left out in the Bill of 1883, yet the present Bill again indirectly reproduced it only in a modified though not in a less objectionable form.

CHAPTER III.

Enhancement of Rent.

Sections 6 *to* 22. *Tenureholders.*—There is a class of tenureholders to be found in some parts of East Bengal whose tenures are of a peculiar nature. From time to time various permanently-settled estates were put up to sale for arrears of revenue and purchased by Government. When the Government took possession of these estates it found that there were some tenureholders in the mehal whose tenures did not date so far back as the permanent settlement, but had been created subsequent to that date. In some cases Government collected the rents of the mehal under khas management for sometime, and then having made surveys and assessments let out the lands to the tenureholders for a definite term at a jumma far above their original rent. The jumma put upon these tenures was generally based upon the gross assets, making an allowance of Rs. 10 per cent as collection charges and Rs 10 per cent. as malikana to the tenureholders. In other cases the tenureholders were never dispossessed, but settlement was made with them on the above principle after survey and assessment. These settlements were renewed from time, to time, though not at rents adjusted at the time of the first settlement. Subsequently these khas mehals were sold by Government at public auction and were purchased by persons other than the tenureholders. These purchasers evicted or tried to evict the aforesaid tenureholders. The litigation that followed these acts or attempts has generally been decided in favour of the tenureholder. The High Court has generally held that these tenureholders have by the above mentioned indulgence of the Government got a status in the mehal, and that though they could have been altogether ousted by the

Government as auction purchaser at a revenue sale, yet, they having been retained in possession or subsequently put into possession of their tenures at an enhanced rent, their tenures have not been avoided altogether, but that they have permanent tenures with variable rents. When the Government made settlement with those tenure holders it did not make any contract as to the principle on which their rents were to be assessed in future; it simply made arrangements for a definite term which were to come to an end after the determination of the prescribed period. There have also been cases in which no allowance was made to tenureholders expressly by the name of *malikana*. In both these classes of cases difficult questions often arise as to the rate of rent payable by them to the subsequent purchasers of the mehal, and as to the rate to which their rents are liable to enhancement. Formerly section 8 of Regultion V of 1812, now repealed, which provided the allowance of 10 per cent as profit to such tenureholders together with a reasonable allowance for collection charges covered the cases of such tenure holders. The existing law has no definite provision bearing on such cases. At the present time the courts generally decree enhancement to the full extent, allowing the tenureholders collection charges at the rate allowed by Government as also the extra allowance received either as malikana or by any other name.

It is submitted that the present Bill does not make any definite provision to cover such cases, but leaves the law in the same indefinite state that it has been in since the repeal of the above mentioned Regulation V of 1812 When distinct provision is intended to be made in the present Bill to cover all possible cases of enhancement in respect of all classes of tenures, it is submitted that clear provisions like those in Regulation V of 1812 should be enacted so as to cover all conceivable cases. It is very doubtful whether section 7 of the present Bill will properly and adequately meet such an object The word customary used in section 7 will be a fruitful source of great difficulty to the landlord. The same difficulties that have to be met with and surmounted in proving a custom will stare the landlord in the face when a customary rate will have to be proved.

Sub-section 3 *of section* 7—Should fix a maximum limit of profit that may be allowed to tenureholders. The maximum limit of profit at 30 per cent. under sub-section 3 of section 21 of the Bill of 1883 was rather hard on the landlord. Clause c of sub section 3 of section 7, which requires the courts to regard the "risks of collection" to be incurred by the tenureholders, adds only an item of indefiniteness with regard to the adjustment of their rents. Such vague expressions are productive of no good, but of contentions most difficult to be satisfactorily dealt with. When the landlords cannot expect to claim any indulgence with respect to the stringent provisions of the sunset law, even when the source of their income is stopped either by flood or famine, or by drought or agrarian disturbance, when no considerations are made by Government towards them on the ground of "riks of collection," although admittedly no facilities have yet been given to the landlords to collect their rents, why then should such considerations be shewn to mere middlemen who are neither *bonâ fide* cultivators nor proprietors of land.

Sub-section 4 is not based on fair principle. "Fair and equitable rent" in such a case is an indefinite expression. In the cases contemplated by this sub-section, the rent to be calculated should be the rent payable by ordinary or at most occupancy ryots to a tenureholder for similar lands with similar advantages in the vicinity. Sections 8, 9, and 10, which limit enhancement to double the amount of the rent previously paid, vesting the court with a discretion to allow a period of five years for the full fruition, by yearly instalments to be settled by the court, of an enhancement decree, and further imposes a period of ten years as the shortest interval between any two consecutive suits for enhancement, are very objectionable as general propositions meant to govern all cases and all classes of tenureholders. Why these middlemen tenants should have these indulgences is not very clear These restrictions on enhancement, even if they can be defended with some show of reason and fairness in the case of occupancy ryots can hardly be defended when applied to the cases of tenureholders. The tenureholders as a rule collect the rent from their tenants and make a profit out of these collections. Nobody grudges to allow them to have that profit, but why should they be allowed to retain by way of right an extra sum, simply because the landlord did not keep their rent always running in the highest leval attainable. Why should the landlord suffer because he allowed the tenure-holder to hold over for some time at a very low rate of rent? There is no hardship in the case of these tenureholders at all, if they are asked to pay up the landlord's just share after full allowance is made for their share of the profit. Why then should there be a gradual increase in their case? As these provisions restricting the limit of enhancement of tenureholder's rent have been embodied in the sections relating the enhancement of the rent of occupancy ryots, with this difference only that the latter restrictions are more stringent, it is submitted that the remarks that will be made under those sections against the general principle of these limitations may be taken into consideration in deciding the justness or otherwise of the restrictions imposed by these sections on the enhancement of rent of the tenureholders At least an exception should be provided to sections 8, 9, and 10 in the case of such tenureholders as have been mentioned above, and also in the case of those that hold their tenures under a contract which allows them only a prescribed percentage on the gross collections. In the case of such tenure holders it would be most unjust to curtail the right of the landlord to the full assesment simply because he has been very indulgent and neglected to trouble the tenureholders every now and then by insisting rigorously on his strict legal rights. No such exception is asked to be made in favour of persons whom the Bill will directly convert into tenureholders or who just stand a chance of an elevation to that class under the gradual operation of the Bill when passed into law.

There is nothing objectionable in section 11 when applied to these tenures, which are recognized at the present day as permanent and transferable. But if the Legislature means to classify tenants who hold more than 100 bighas of any kind of land for any purpose, and who have been subletting the whole or a part of those lands, as tenureholders and promote other classes of tenants to these grades, it is submitted that then the provision contained in this section relating to the general power of sale, gift, and mortgage given to all permanent tenureholders is most objectionable.

Again, tenures which are only heritable, but not transferable, are rare in the country. There are also very old tenures which, by the conditions of the contract creating them, are not transferable. Even these tenures are made transferable by one sweeping provision contained in this section 11, and the condition of non-transferability which was embodied in the contract, say, even 20 years before this Bill was made, is swept away and made illegal by section 12.

The unfairness of these provisions is apparent. If the landlord knew that he would not be able to make such a contract to protect himself, very likely he would not have created such a tenure at all. To make such conditions in a pre-existent contract null and avoid, and to take the landlords by surprise and to cut off the reversion of the tenure to the landlord on failure of heirs, by allowing the last owner to transfer the tenure against the implied or even the express conditions of contract creating it, can hardly be said to be just. It is not unknown that when at the time of the creation of a tenure heritability only is given or a restriction is imposed on its tranferability, the landlord forsakes a part of the bonus which he would otherwise be entitled to in full Under such circumstances to secure to the middleman a right for which he did not pay, and which the landlord would not have yielded even for a consideration must be said to be subversive of his proprietary right.

The phrase "a condition *consistent* with the provisions of this Act" used in section 12 will be productive of misapprehension and dispute. The Bill does not and cannot give an outline of the principles which may guide the court to determine what conditions are *consistent* with its provisions. It is doubtful whether such conditions as are not forbidden by the Bill can be said to be *consistent* with its provisions.

Again, the wording of the section is such that the onus of shewing that the particular condition solemnly agreed upon by the tenant is consistent with the provisions of the Bill appears to be very unfairly thrown upon the landlord. The just and fair principle is that where an admitted condition is sought to be nullified as being illegal the party who wants to get over such condition on such plea should substantiate it

As to the consistency or otherwise of a condition with the provisions of the Bill, take the following instance :—A Hindu landlord creates a tenure in favour of a Mahomedan tenant, and it is provided that no cow should be killed or allowed to be killed on the land, and that in case of a breach of this condition the tenureholder will be liable to ejectment. What is to be said of such a condition? Is it consistent with the provisions of the Bill?

With reference to the above it would be proper to consider the effect of clause *a* of section 31 and clause *b* of section 58. Both these clauses allow the tenant to use the land as he pleases, provided he does not by any of his acts render it unfit for the purposes of the tenancy. Now, slaughtering cows can never be said to render the land unfit for tenancy; rather on the contrary it may be argued that the blood and bones of the animal, acting as manure on the soil, would improve the land, and render it the more fitted for cultivation. But such an act would not only be most repugnant to the feelings of a Hindu landlord, but would, according to the tenets of his religion, make him liable to expiation. And yet such a condition may not be deemed to be *consistent* with the provisions of the Bill.

To curtail the freedom of contracts and the means of enforcing them by such vague expressions, leaving the parties to grope in the dark, is anything but fair. The general principles of the law of contract and the valuable rights and privileges of the landlord should not be hedged and fettered in the anxiety to protect the interests of the tenants.

The above remarks apply with greater force in the case of ryots, and therefore it is submitted that the phrase above alluded to, which has been used in section 12 as well as in clause *b* of section 23, clause ii of section 31, and clause *b* of section 58, may be so modified as to make a condition void only when the same is expressly forbidden by the provisions of the Bill.

While on the subject of private contracts, it is proper to state here once for all that the present Bill has in many places embodied provisions which, giving retrospective effect to its stringent clauses, sets at naught legal and fair contracts of long standing. This is not only unjust and unfair in general, but is in the present case fraught with positive mischief, in that the application of new provisions with a retrospective effect to the old state of things would deprive the landlord of his vested legal rights and privileges without substituting any adequate return for their loss.

Registration of Transfer of Tenures.

Sections 15 *to* 22.—Although there seems to be no substantive provisions for the registration of the transfer of shares of tenures in the above sections, yet section 21 assumes the registration of the transfer of shares, and thereby indirectly authorises their registration. But at the same time there is no saving clause as is found in Act VIII of 1869, under which the zemindar is not bound to recognise any division of the rent of a tenure. This omission is

likely to create difficulties and raise vexed questions. On the other hand, section 18 may be said to provide indirectly that when a transfer even of a share is registered the landlord will have to look to the transferee only for the due payment of the rent of that share. It is very likely that the present Bill means only to compel the landlord to recognise the transfer of the entire tenure as far as the rent question is concerned. But without the above mentioned saving clause there remains room for a doubt. And in these matters the room for a doubt is always objectionable. While on the subject of the registration of transfer of tenures, it may not be out of place to make some observation on the definition of the word transfer. The word "transfer" in the present Bill is defined to *include* sale, mortgage, and gift. But transfer as defined in the Transfer of Property Act has a wider meaning: it includes under that Act also leases. The present definition is therefore ambiguous. It does not limit the meaning to sale, mortgage, and gift only, and therefore may be said not to exclude leases. It would be better to do away altogether with the word transfer from the Bill, or to define it so that it may only mean sale—voluntary or by court and gift If it be allowed to include also mortgage, then the use of the word in the sections relating to registration of tenures would not only compel the landlord to register even simple mortgages of tenures, but may also create other difficulties.

CHAPTER IV.

This chapter is very objectionable. It creates a new class of tenure holders never recognised or even known in the country. Failure on the part of the landlord to rebut the presumption raised in favour of the ryot under sub-section 2 of section 64, will elevate an occupancy ryot into a tenure holder, and thus secure to him certain distinct rights and privileges not enjoyed by other occupancy ryots This elevation will go on from time to time to the detriment of the interests of the landlord. What is the principle on which this promotion is based, and what are the advantages to be gained by the inauguration of this system and classification it is not easy to determine. On the contrary, the ryot at a fixed rent or rate of rent will be a peculiar class of tenant. He will be a tenureholder with respect to the transfer of and succession to the tenure, but remain a ryot in all other respects, such as the realisation of his rent. His holding or tenure will not be liable to summary sale, and his crops will be liable to distraint. The landlord will not be entitled to claim a right of pre-emption in the case of transfer of his tenure. Nor will the provision contained in section 35 relating to gifts apply to his tenure. Thus the status of this class of tenants will be a *bundle* of inconsistencies, and create unnecessary complications and invidious distinctions between two classes of occupancy ryots, which it would be hard for the ryots themselves for whose benefit all these pains are being taken to understand.

Section 23, *clause b.*—This clause gives an undue advantage to ryots at a fixed rent or rate of rent. It has been stated that they are merely a class of occupancy ryots. Why then should they not also be liable to ejectment for reasons mentioned in clause i of section 31. If these ryots are allowed to render the lands they hold unfit for the purposes of the tenancy without any penalty for doing so it would not only encourage them to do so to the detriment of the landlord's interest in the land, but will also tempt all other ryots who have done such acts to set up false claims of holding at fixed rent. The exemption of this class of ryots from suffering the consequences of their unlawful and mischievous acts cannot be defended on any ground whatsoever.

CHAPTER V.

Occupancy Ryots.

General.

Sections 24 *to* 31:—The provisions relating to the "settled ryot" are most objectionable. They make very many novel encroachments on the rights of the landlord. It has often been said by high authorities that Act X of 1859 by creating a class of tenants under the name of occupancy ryots had invaded the then recognised rights of the landlord. Yet compared with these provisions it can safely be said that the injury done by Act X of 1859 is indeed very small

(1) Under Act X of 1859 the payment of rent was a condition inseparable from the acquisition and maintenance of the right of occupancy. The present provisions ignore altogether the necessity of such a condition.

(2) Act X of 1859 gave right only to the specific land which had been held or cultivated by the ryot for a period of 12 years continuously. The "settled ryot" of the present Bill is required only to have held some land or other in a particular village or estate for a period of 12 years, and then he is endowed with a peculiar attribute on account of which he is capable of creating a right of occupancy in his favour in every piece of land that he may get hold of, either of the same village or of the same estate.

(3) Section 7 of Act X of 1859 saved the terms of written contract against the acquisition of a right of occupancy. But section 210 of the present Bill by one sweeping clause (clause *a*) nullifies all such contracts, *i.e.* makes all conditions against the acquisition of a right of occupancy void *ab initio*.

(4) Under Act X of 1859 it was the ryot who had to prove that he had acquired a right of occupancy. The present Bill on the contrary creates a presumption in favour of the ryot which it will be for the landlord to rebut, or in other words it will be for the landlord to prove in every case in which any ryot may choose to set up the plea of an occupancy right that the ryot has *not* been holding the land in question or any part of it for 12 years. This is undoubtedly a preposterous proposition. It sets all the principles of the law of evidence at naught, imposes the burden of proving a negative on the shoulders of the landlord, and allows the person who alone is capable of shewing most satisfactorily how he has made up the required 12 years to remain at ease, and requires the landlord who may be an auction purchaser of a few years' standing, and therefore quite incapable of hunting out the antecedents of a particular tenant before he came in contact with him, to ferret out and disclose the past life and career of his opponent tenant. The failure to prove such an absurd item is inevitable, and the result is that every ryot who may choose to call himself a settled ryot is likely to succeed in obtaining a verdict in his favour.

It is not easy to determine what object will be gained by this half-and-half measure, how it will "tend to simplify litigation," and what are the state of things in the Lower Provinces, the existence of which warrants such a presumption. The presumption does not cover the whole ground of the acquisition of the right of occupancy as enunciated in the present Bill The plea of the ryot may be that although he has not held the specific plot or any part of it continuously for a period of 12 years, yet he is a settled ryot of the village or the estate the land of which may be in dispute. In such a case the presumption is worse than useless.

(5) Act X of 1859 never allowed a ryot who had left his holding without making any arrangement for the payment of its rent to come back and claim the same at any time within three years. The courts from the time he left the same have aways looked upon such acts as amounting to abandonment or relinquishment of the holding. The present Bill not only allows the ryot to get back into possession even in such cases (section 96) and not only causes a substantial loss to the landlord in such cases, but allows the ryot even to count the period of his absence to make up his 12 years.

The following illustrations will shew the justness of the above remarks :—

First, take the case of a settled ryot. On the 5th of Baisakh a settled ryot of village A, but who resides on the land of a different landlord in village B, leaves his holding in village A, and ceases to cultivate the same. For almost one year, *i.e.* down to the close of the current agricultural year, the landlord *must* wait and see what the ryot means to do, He cannot enter upon the land and let it out to anybody else or bring it into cultivation himself. Then arises the question whether the landlord can even after the close of the current agricultural year let out the land in the above case. Section 96 says that the landlord can do it when the ryot has voluntarily abandoned his *residence* and has ceased to cultivate the land. In the case supposed the ryot has not abandoned his residence at all. He is still residing where he was How can section 96 then cover such a case. Taking for granted that this section covers also such a case, the landlord was to go to the expense and trouble of publishing the notice required by sub-section 2 of section 96, which there is nobody to repay. The year's rent also is wellnigh lost. If the former ryot had cultivated the land, the rent might have been realised by distraint. After the abandonment and after it has been let out to another ryot the holding cannot be sold for the arrears.

Take another case.

The landlord enters upon the land and lets it to a third party and publishes the required notice. The ryot does not stir for about two years, and then files suit. The landlord having been very much annoyed contests the suit, and more than a year and very likely two years elapse before the case is finally decided. So by the time the ryot recovers possession by executing the decree five years elapse from the time the ryot left. The landlord has to remain in suspense for three years and then give up the land and pay the costs of the suit in the bargain.

Then, again, the fact that the ryot will be able to recover back his land if he should sue within three years, and the chance of any new ryot who might be inducted on the land and who would surely be dragged into the suit against the landlord, losing his labour and costs of cultivation, not to mention costs of suit, will all conspire to keep away all right-thinking people from taking lease of and cultivating such lands, and thus the landlord will be left either to cultivate the land himself or to let it remain fallow and without any return.

As section 96 has been referred to it would not be out of place to state here that sub-section 7 of section 26 coupled with section 96 will give even to the non-occupation ryot a right to remain away from the land for a year and a half before he makes up his mind as to whether he should sue to regain the possession of the land, which he under no circumstances should be allowed to do. Why should he even be allowed to sue for possession after having voluntarily abandoned his holding, and why should the landlord wait for one year for his return without having been paid the rent in advance; and lastly why should he be allowed to count this period of his *neglect* to till the soil to complete his 12 years? Can there be anything more unjust and one-sided than this provision, which brings about a result so disastrous to the landlord.

Restrictions on Transfer.

So much has been said on this question from time to time by representatives of both the landlords and the ryots' interest that the question may be said to have been argued threadbare,

and any attempt to put forward any further argument would be a mere repetition. Yet as some of the restrictions proposed by the Bill of 1883 have been omitted from the present Bill, it has become necessary to say something with regard to matters of detail.

Under the original Bill of 1883 the landlord had a right to buy up at a fair price the holding even in the case of bequest, when the bequest was in favour of a person other than the legal heir (section 55 of the Bill of 1883).

Again, when the ryot made a gift of his holding in favour of a person other than the landlord, the landlord had a right under the Bill of 1883 (section 54) to buy it up if he chose at a price to be fixed by the court.

These restrictions have now been done away with. It is submitted that it would be most prejudicial to the interests of the landlord if no right be reserved to him to annul, transfer or buy up holding in cases of bequests or gifts made to persons other than heirs.

The effect of allowing transfer of occupancy rights to take place unreservedly has been so disastrous in the Sonthal Pergunnahs (*vide* Resolution on the Administration of Civil Justice in the Sonthal Pergunnahs. *Calcutta Gazette*, July 23, 1884) that no argument is needed to be able to see clearly what the consequences would be in Bengal were such practice legalized.

Section 35 of the present Bill reproduces with some minor alterations the provision of section 54 of the original Bill regarding the service of notice on the landlord after registration of the deed of gift. Of what use will this provision be if there remain no clause under which the landlord may object and claim to annul the gift or purchase the holding. The meaning and object of sub-section 4 of section 35 is not clear.

Restrictions on Subletting.

Section 37—Of the present Bill has been framed with the object of restraining (1) non-agricultural classes from buying up occupancy rights; and (2) subletting by occupancy ryots. In order to gain the above object it has been provided that when an occupancy ryot will sublet more than half of his holding he will be converted into a tenureholder. Not a tenure-holder out and out, but one having some incidents of a tenure proper attached to his tenure.

The first question is whether the status of a tenureholder is so disadvantageous as to deter the non agriculturist from buying up any occupancy holding, and secondly to deter the occupancy ryot from subletting.

The only disadvantage threatened is the liability of the holding to summary sale for arrears. Now, is it a disadvantage at all? If it is, all permanent tenures are liable to this disadvantage. An ostensible advantage of a summary sale to the landlord is the saving of a little time. An occupancy right is made saleable under a decree of a court. In case it is converted into a tenure it will be liable to be sold on a simple petition. But if the tenure holder contests the demand the Collector will have to raise issues and decide the question as much as the civil court would have to do in case of a suit (section 198). The ryot has an advantage under the summary procedure. He is not harassed so much under this as by a civil suit. His cost is much less than what he has to incur in the civil court. And lastly, whether he defends or not, the ryot is liable to the landlord for much less cost in case of sale by the Collector than in the case of a sale by the civil court. All these are advantages to be gained by the ryot in case of a summary sale. What then is the fear which is likely to deter non-agriculturists from buying occupancy rights or occupancy ryots from subletting.

The proposed conversion of a ryot into a tenure-holder is advantageous to him in more ways than one.

(1) He is no longer liable to distraint for rent

(2) He can be ejected for having used the land in a manner which renders it unfit for the purposes of the tenancy.

(3) He can transfer his tenure without having to take the trouble of observing the preliminaries provided by section 32, and without any apprehension of any claim to pre-emption by the landlord which enhances the value of his tenure as it ensures security to the purchaser. From the above it will be clearly seen that section 37 instead of gaining the object and acting as a deterrent will on the contrary encourage subletting and purchases by non-agriculturists which the Bill proposes to guard against.

Instead of such imaginary checks if it were simply provided that in cases of subletting by occupancy ryots after March 1883, the portion so sublet was to revert to the landlord and that the relationship of landlord and tenant between such sublessee and his lessor should cease, except in the cases mentioned in clause (*a*) of section 37, it should stop subletting altogether and effectually check non-agriculturists from buying up occupancy rights.

That the restriction provided by section 37 will be altogether an unworkable provision is apparent on the face of it. It is provided that the holding is to be deemed to be a tenure when it has been so registered under any Act that may be passed for the purpose. Now the question will be whose duty or interest it will be to have the tenure registered. The landlord does not gain anything by the conversion; rather loses some of his rights. Hence it will never be his interest to have it registered. If the conversion be deemed disadvantageous by the ryot he would not do it. The sublessee no doubt has a prospective hope of acquiring a right of occupancy. But being under the influence of the occupancy ryot and standing the chance of being ejected and troubled by his lessor he would not before the perfection of his title take the trouble and bear the expense of having his lessor converted into a tenure-holder.

Then, again, various questions will arise in order to determine whether the ryot had sublet more than half of his holding. An occupancy ryot may have more than one holding. He may be taking lands from time to time and subletting parts of the same. So that the quantity of land which represented more than half the holding in any given year might be under that proportion the next year. In this way cases might arise where it would be a matter of considerable difficulty to determine the period of time at which the line ought to be drawn to find out whether more than half the holding has been sublet.

ENHANCEMENT OF RENT—SECTIONS 39 TO 50.

Often and often have hopes been held out to the landlords that facilities would be given them to enhance the rent of the occupancy ryots to a fair and equitable rate, which, on account of the unworkable nature of the provisions of Act X of 1859, they (the landlords) have not been able to obtain. When the Hon'ble Mr. Ilbert introduced the first Bill in Council, he said "that the two main objects at which our legislation should aim are :—*First*, to give reasonable security to the tenant in the occupation and enjoyment of his land; and *secondly*, to give reasonable facilities to the landlord for the settlement and recovery of his rent."

He also said, in another place, that "Act X of 1859 was a useful and beneficial Act, and if, as must be admitted, its working has not been successful on some important points, this failure is attributable, not to any defect in the fundamental principles on which the Act was based, but mainly to defects of language and expression."

The Select Committee, to whom the Bill, introduced by the Hon'ble Mr Ilbert, was referred, and who have taken the trouble of revising and re casting it in the present shape, also say in paragraph 31 of their report—"As regards enhancement by suit, our object has been, while laying down rules which will be substantially just to both landlords and tenants, to devise a system which would avoid those elaborate and difficult enquiries, the necessity for which has made the present enhancement law an almost useless instrument in the hands of landlords."

Now, the questions for consideration are :—

First—Are the provisions contained in the present Bill substantially just, both to landlords and tenants?

Secondly—Has the present Bill removed those obstacles and difficulties in the way of getting a fair and equitable rent in any way, or to any extent?

The present Bill deals with the subject of enhancement under two heads, viz., *First*, enhancement by private contract ; *second*, enhancement by suit.

The provision relating to the enhancement of rent by private contract is a novel one, and has no place in the existing law. No such suggestion appears to have been made in the Bill prepared by the Rent Commission. It is submitted that neither the wisdom nor the policy of this addition is at all clear. The ryot having a right of occupancy has a fixed tenure. It is admitted, both by the Bengal Government and the Government of India, that the ryots having rights of occupancy are far more numerous than those that have it not. It cannot be denied that the position of the ryots having occupancy rights is far more strong at the present day than it was even ten years before. Nor can it be denied that such ryots know and understand the privileges and security of their position better at the present day than they did even ten years before. Nor can anybody ignore the fact that the occupancy ryot of to-day wields greater powers to check the landlord's arbitrary acts than the latter has to harass the tenants. Nor does it admit of any doubt that the ryot of the present time is far more able than the landlord to dictate and enforce his own terms. The agrarian disturbances that have of late taken place in different parts of East Bengal show most unmistakeably the spirit of combination which the ryots possess, and which they can and do use with impunity against their landlords. Under such circumstances, can it for a moment be conceived that the ryots will be imposed upon or forced to enter into any contract by undue influence? Why, then, these limitations as are provided by section 41 of the Bill upon private contracts? Terms of a private contract are based upon and determined by the nature of the supply and demand, or the likelihood or otherwise of losing something more in any other way than what is given up by private contract. No such circumstances exist in the case of an occupancy ryot. He cannot be ousted, even if he would not accept the terms proposed by his landlord. His rent cannot be enhanced, theoretically, even to anything beyond what is fair and equitable. After subjecting oneself to the delay, trouble, vexation, and costs of a lengthy litigation, involving "elaborate and difficult enquiries," one has only one to hundred chances of coming out successful in an enhancement- case. What reason has the occupancy ryot to fear the landlord; what the risk or necessity which is likely to induce the occupancy ryot to enter into a contract so prejudical to his interest as requiring the active intervention of the Legislature to impose so many restrictions and limitations upon private contract for the settlement of rent? An occupancy ryot is not more helpless than a *purdanaseen* lady; nor is he a more likely person to be unduly influenced than is a debtor by his creditor. Nor does he stand the chance of being more deceived than a ward, who has lately arrived at majority, by his guardian. Nor is his relationship with his landlord one of greater active confidence than that of a client to his attorney. And yet the general principles of the law of contract are deemed sufficiently protective of the interests of such and like other per-

sons. And, then, why cannot a ryot be left to avoid and annul any agreement which he may have entered into under mistake, misrepresentation, fraud, coercion, or undue influence? And, then, why should there be a special legislation in favour of occupancy ryots as a class imposing stringent restrictions and limitations upon private contracts? The restrictions and limitations put upon private contracts at enhanced rates will undoubtedly drive the landlord to a suit for enhancement, even in cases where he might have amicably settled the matter out of Court. Take the instance of enhancement on the ground of prevailing rates. Even with the restrictions made by the Bill on this head, the landlord is entitled to get 50 per cent increase by a suit. But by a private contract he cannot get more than 25 per cent. Take another instance: the landlord is entitled to the full benefit of the increase caused by improvements made at his cost or agency, and a Court of Law will decree him that. But if he were to make a private contract relating this very matter, he could not secure more than 25 per cent. over the rent previously paid to him. It is, therefore, submitted that such a provision, which necessarily drives the landlord to seek the assistance of the Law Court, because he cannot amicably settle the matter out of it, however much he and his tenant may be desirous of doing it, is a most dangerous provision subversive of all amity and good feeling between the landlord and tenant.

That these restrictions and limitations are altogether onesided, and forged only in the interests of the tenants, and cannot be said to be "substantially just to both landlords and tenants," is evident. That these, instead of facilitating the settlement of rent, will increase litigation and set class against class is also clear. These, in short, will discourage all contracts and bar all private settlement of rent. On the face of the restrictions and limitations imposed upon enhancement by suit, the chance of getting a private settlement of rent at enhanced rates is *nil*. The ryot, knowing full well how matters stand, and counting his chances in a Court of Law, would be the last person to enter into a contract prejudicial to his own interests. If, over and above this difficulty, there be further restrictions and limitations put upon private contracts, what the fate of the landlord will be can be better imagined than described. When a maximum limit is fixed by law regarding anything, it is not possible, except in exceptional cases, to obtain it. The restrictions and limitations imposed upon enhancement by contract will be obnoxious in another way. These will have a tendency to induce the tenants either to go to Courts to avoid and annul the engagements they may have made, or to dispute their validity, when they may be put forward against them. Thus litigation ruinous to both parties, and the question as to what was the rent before the contract was made, will open a fresh field of enquiry for the Court and a fresh source of trouble for the landlord in these cases. These restrictions will handicap the landlord and curtail his right of property without any adequate advantage being secured to him in any way, and will give an undue preference to the fancied interests of the tenants to the prejudice of the just rights of landlords.

The duty imposed by sub-section 2 of section 41 on the registering officer of "ascertaining that the contract is in accordance with the provisions of the Act is one of the most unworkable and objectionable provisions of the Bill. It presupposes that the registering officer is fully conversant with the details of the Bill, and is also aware of the various customs which have not been abolished by it, and which in many particulars govern the relationship between the landlord and tenant. It entails an enquiry into the state, conditions, and rent of the holding before the contract was made. What time and trouble such an enquiry will cost it is impossible at present even to emagine. Although clause (*c*) of section 54 provides that certain rules will be made for the guidance of officers registering contracts under sections 41 and 42, but it is submitted that the rules, however wisely and definitely drawn out, will scarcely be able to get over the complications which will necessarily arise out of the provision above mentioned. Much less will they be able to ensure saving of time and trouble.

The revised section is no improvement on the section which it remodels. The Select Committee say that they have expunged the provision by which the registering officer was required to satisfy himself that the contract was fair and equitable, and that now he will have *merely* to satisfy himself that it is in accordance with the provisions of the Act. It is submitted that this change does not, in the least, lessen the work or responsibility of the registering officer. The present provision not only fully covers all that the registering officer would have had to do if the former wording had been retained, but also something more. The present expression is as vague and indefinite as the one expunged. This provision gives the registering officer a final power and authority of deciding the question as to whether a certain condition is or is not in accordance with the provisions of the Bill. Such a power would not even be allowed to the Civil Courts of first instance if the matter were to come judicially before them. Whether the decision of the registering officer on this subject is to have any effect in the Civil Courts, where the whole question may be fully re-opened, is not settled or known. If the Civil Courts will have power to enter into the whole question afresh, then what is the good of encumbering the registering officer with these details and such duties. The provision virtually leaves the matter of registration entirely to the discretion or caprice of the registering officer. No provision even for appeals against his decision has been embodied in the Bill.

Section 42 is not only objectionable in the interests of the landlord, but also in the interests of the ryot. The restrictions hereby put to the settlement of rent on new lands taken by the settled ryot will preclude landlords from letting the same to him. And this will not only eventually deteriorate the value of lands, but will also lessen the chances of

the settled ryots getting new land, although in great need for the same. It is inexpedient, therefore, to curtail the power of the landlord in letting out such lands by private contract.

ENHANCEMENT OF RENT.

BY SUIT.

Then as to the provisions relating to enhancement by suit, it is submitted that the provisions of the present Bill, though they are more definite in some respects both as regards the grounds and the limits of enhancement than the provisions of the present law, seem to secure this wherever it has been attained, at the landlord's expense. In other respects the provisions of the present Bill are as indefinite as those of the present law. In some cases "elaborate and difficult enquiries" under Act X of 1859 and the present law so reproachfully spoken of remain substantially the same with only a change as to the mode and process of investigation. Clause (*a*) of section 43 is the same as clause (1) of section 18 of Act VIII of 1869 (B.C.). Instead ofthe words "same class of ryots" the general name of "occupancy ryots" has been used. This is the only improvement by way of definiteness. All other vexed questions which arise and require determination now under clause (1) of the present law will also arise and have to be determined under clause (*a*) of section 43. What is to be deemed the prevailing rate in each particular locality is one of the most difficult of questions. How far the preparation of a table of rates by the revenue officers as provided for by Chapter XI of the Bill would solve the difficulty and how far it would be fair and equitable to depend upon such table of rates for determining the question in each particular case will be discussed hereafter in its proper place. Suffice it to say here that the difficulty will remain the same, if not knocked on the head arbitrarily by enforcing a strict adherence to the tables prepared, which it would be hardly fair and equitable to do

The determination of the question as to whether the land the rent of which is sought to be enhanced is of a similar description and possesses similar advantages with those lands the rate of rent of which is put forward in evidence for comparison remains encircled with the same difficulties. Hence, as far as this clause is concerned, no facility whatever has been granted to the landlord for the adjustment of his rent.

Clause (2) of the present law for enhancement has been sub-divided into three heads and placed under clauses (*b*), (*c*) and (*d*) of section 43 of the present Bill. Under the existing law the increase in the value of the produce of the land is the most important ground of enhancement, and this is a ground which is susceptible of distinct proof and substantiation. It allows, the landlord a reasonable, fair, and equitable share of the profit made by the ryot in each particular piece of land. The elimination of the word 'value' from the present clause and the substitution of the word 'price' for it is no doubt more accurate and definite. In other respects clause (*b*) of section 43, which is put in the place of this portion of clause (2) of the present law, is not only no improvement on the existing provision, rather on the contrary it curtails the landlord's right to enhancement and makes it dependent on the rise of the price of *staple food crops* only. The Select Committee in paragraph 33 of their report say "that the price-lists of staple food crops are to be taken simply as indicating a general rise or fall in prices, and without any reference to the particular crop grown on the land the rent of which is in dispute; and our intention is that the price lists should be worked out very much on the principle on which the commutation of tithes according to average prices is worked out in England." It may be that the price of all other crops has a certain relation and bears a certain proportion to the rise or fall in the price of food crops. But it is not always true that the rise or fall in the price of food crops regulates the rise or fall in the price of other crops. It is therefore neither safe nor expedient to adjust the rent of lands producing crops other than staple food crops by the rise or fall in the price of food crops. Such a provision is likely to act injuriously both in the interests of the landlord as well as of the tenants. The Bill that was framed by the Rent Commissioners as well as the Tenancy Bill of 1883 provided the regulation of rent according to the prices of the staple crops. The present Bill not only ignores the custom of the country as to the adjustment of rent according to the crops grown on the soil, but even makes a new departure from the lines sketched out by those Bills and very unfairly introduces a restriction unknown and unheard of in the country. It very unjustly excludes from consideration the rise in prices of very valuable crops, whose cultivation has thoroughly and generally been established in particular tracts of the country. It indirectly brings all kinds and classes of lands almost to the same level and makes enhancement under this clause to depend not upon the price of crops actually grown on the soil, nor upon the fitness of the lands to grow such valuable crops, but upon the general rise in prices of food grains to be declared staple by certain authorities. There are places which are particularly fitted for and which do grow high-priced crops, and yet if the lands of such places are not be fairly assessed on the basis which is the only proper one, namely, the rise in prices of such crops, it cannot but be most prejudicial to the interests of the landlord. It has never been denied, but rather on the contrary it has often and often been admitted, that the principles of enhancement as enunciated in Act X of 1859 are just and fair to the landlord as well as the tenant Why then is that old principle of regulating the rent of the land according to increase in price of the produce of it to be narrowed and limited to the rise in the price of some particular crops? It is submitted that the principle underlying the proposed provision of this clause is not only unfair but also erroneous. If

this encroachment on the right of the landlord and the tenant to have their rent adjusted according to the price of the crops sown on the soil has been made on the ground of a supposed facility for determination of the rise in the price of any particular crop, afforded by the preparation of price-lists of staple food crops, it is submitted that such price-lists can as well be made of all or at best the principal crops that are usually sown in a particular locality, and the question as to the price of which of such principal crops is to be taken into consideration in regulating the rent of any particular plot of land may safely be left to the consideration of the courts in each particular case.

Clause (*c*) of section 43 is also faulty and one-sided. Under the existing law, and so it was under the old, the ryot is liable to enhancement when the productive powers of the land have increased otherwise than by his agency. The provision under this head has been divided into two parts in the present Bill, viz improvement by or at the expense of the landlord, clause (*c*), and by fluvial action, clause (*d*). These two heads have been made to exhaust, though they really cannot exhaust, the existing provision. These two clauses do not at all touch the case, where the increase in the productive powers has been effected by the joint agency of the landlord and the tenant. That there are numerous cases of this description no one will deny. Not only did the Bill prepared by the Rent Commissioners, but even the Bill of 1883 did provide by sub-section (2) of section 74 and by clause (*b*) of section 75 for such a case and made a fair provision to govern it. That provision, though embodied in a different form in clause (*b*) of section 134 relating to the table of rates, yet does not find a place in the general principles enunciated by section 43. This is objectionable and is prejudicial to the interests of the landlord.

Then again there are, and may be, cases where the productive powers of the land have increased neither by the agency of the landlord, nor by that of the tenant, or by the joint agency of both and not even by fluvial action. Section 43 does not make provision for such cases. Clause (*c*) of section 134 partly covers such a case. The existing law covers such a case by the simple qualifying phrase "otherwise than by the agency or at the expense of the ryot." A principle which would cover such a case should find a place in section 43. As an illustration of such a case take the instance of a canal cut by Government. It was not for purposes of irrigation, in which case a tax would have been paid either by the landlord or by the tenant for the use of its water. This canal may however increase the productive powers of the land even without flooding the adjacent places. Why should not the landlord reap the benefit of such improvement equally with the tenant.

Under the existing law the law the landlord can enhance, where there has been an increase in the value of the produce otherwise than by the agency or at the expense of the ryot. This ground cannot be said to be fully covered by the ground embodied in clause (*b*) of section 43, viz. a rise in the average prices of staple food crops. The landlord may establish a market near the tenant's land or may cut a canal or open a way from the tenant's village to the nearest market, and thereby cause an increase in the value of the produce of the specific land without there being any general rise in the average price of the staple food crops in the market. Such a case cannot also be said to be covered by clause (*c*). It does not actually increase the productive powers of the land. As it is not only a possible but a likely case, it should have a place in the general principles of enhancement. It is hoped that it will appear from the above that there has not been any improvement made by the present Bill on the existing law as far as the principles of enhancement are concerned, and that the proposed changes are detrimental to the interests of the landlord and in curtailment of his recognised rights. The present Bill has, in short, merely tried to narrow the application of the existing principles and that only in the interests of the ryot.

Section 44, clause (*a*), is a new provision inconsistent with the custom of the country and the associations of the people. It is unfair in principle and inexpedient in policy. In olden times the prevailing or customary rate was the general standard of enhancement. No limitation as the one proposed by the Bill was placed on enhancement by Act X of 1859, nor since the passing of it. No such restriction was suggested by the Rent Commissioners, nor by the Bill of 1883. The proposed change punishes the landlord for his indulgence towards his ryots. One of his rights is curtailed because he allowed some of his ryots to hold much below the prevailing rate at a time probably when inclemency on the part of the landlord would cause their ruin. If the prevailing rate of rent is at all a ground of enhancement, other circumstances remaining the same, the maximum enhanced rent ought in fairness to be allowed to come up to such rate. In support of this restriction on the old rule of enhancement the Select Committee say that they have not been able to adopt the proposal to limit the maximum enhanced rent to one-fifth of the average annual gross produce in cases of enhancement on the ground of an increase in the productive powers of the land because it would be almost impossible to ascertain in each instance the average annual gross produce expressed in staple crops and because weighty objections have also been taken to the principle underlying that proposal. That they have accordingly struck out the provision to the above effect contained in the original Bill. And that as a set-off against this they have increased the stringency of another limitation contained in the original Bill by providing that, when rent is enhanced on the first ground, *i.e.* clause (*a*) of section 43, the enhancement shall not amount to more than 8 annas in the rupee (50 per cent.) and that, when it is enhanced on the second or fourth of these grounds under clauses (*b*) and (*d*) of section 43, the enhancement shall not amount to more than 4 annas in the rupee (25 per cent.), and by providing that the court shall not in any case decree an enhancement which appears under the circumstances of the case to be unfair and inequitable. Enhancement on

the ground of increase of the productive powers of the land has always been found under the old and the existing law to be the most unworkable of all the provisions relating to enhancement, and it appears that the select committee were fully conscious of the difficulties that lie in the way of enhancement on that ground. But they say "enhancement on this ground when the increase is caused by the landlord's improvement will be facilitated by the system of enquiry and registration provided for in the Bill, but enhancements on the ground of increase of productive powers caused by fluvial action will still be liable to the same difficulty caused by the absence of any proof of the former productive powers of the soil, as has rendered this ground of enhancement futile in the past years."

The onus in an enhancement case is heavily put upon the landlord; the least flaw in the evidence which causes the mind of the judge to waver exonerates the tenant from liability to enhancement. Rarely can a judge be satisfied of the justice of the landlord's claim in such a case. And the difficulties spoken of are the difficulties of the landlord which thus constitute the vantage ground of the tenant. Under such circumstances it is clear that the landlord has very little hope in this direction. As to the facilities of enhancement on the ground of increase of productive powers by the agency of the landlord, which it is supposed the proposed system of enquiry and registration will afford, it is submitted that it is more theoretical than practical and that it will ultimately prove to be of doubtful good, if not altogether delusive. It is hardly fair to impose so many stringent restrictions as an insurance against the excessive flow of good from the proposed system of enquiry and registration, which at best must for some time be regarded as tentative and uncertain, when such restrictions relate to another and altogether different ground of enhancement, viz. the one based upon prevailing rates so long acknowledged to be the most convenient and the most easily understood ground If any one of the grounds of enhancement is more feasible than the others it is this ground. The ground based upon the rise in the average price of staple crops, though more definite than the third and fourth grounds, requires such enquiries relating to the past and present prices that it is not likely to prove so easy of ascertainment as is supposed. Under such circumstances to cut down the rate of enhancement according to prevailing rates by way of set-off for the protection of the ryot against any possible apprehension of hardship in case of enhancement on any other ground is most prejudicial to the interests of the landlords It is against all principle to impose a restriction on a particular right simply on the ground of a bare possibility of any abuse of another and a quite distinct right. In such a case, if any restriction is really necessary, it should be on the exercise of the latter right. As to whether there is any such necessity or not will be discussed hereafter under section 46.

The injustice and unfairness of this restriction will be apparent in the following illustration.

A holds 10 bighas of land at Re. 1-4 per bigha and pays Rs. 12-8 yearly.

B holds the same quantity of land of a similar description with similar advantages at the rate of 14 annas per bigha and pays Rs 8-12 yearly.

C holds a like quantity and at the rate of Re. 1-8 and pays Rs. 15 yearly.

All the three are occupancy ryots

The prevailing rate for such lands held by occupancy ryots is found to be Rs. 2 per bigha. Suits are instituted for enhancement and decreed.

D, E, F, &c., &c., are all occupancy ryots holding similar lands with similar advantages in the vicinity and all of them are paying at the rate of Rs. 20 for 10 bighas. The decree cannot make A pay more than Rs. 18-12 yearly, B more than Rs. 13-2, and C is made to pay Rs. 20.

What is the fault of the landlord in such a case, and why should such an invidious distinction be made between A, B, and C when their rent is fairly and equitably settled by a court of justice and not by a capricious and oppressive landlord?

In the above case B cannot be made to pay even as much as C had been paying.

Then again the difference once made is likely to remain for ever, and whoever by an accident got into possession of a quantity of land at an unusually low rate will reap not only the advantages of the low rate for the time being but will be entitled to enjoy the benefit of the accident at the commencement of his tenancy in the shape of immunity from a fair and equitable enhancement, whereas others who came on their lands on a high rate of rent will be required to pay higher and higher.

It may be said it would be very hard on B if he were made to pay at once Rs 20 in the place of Rs. 8-12 annas. But how is it hard? He should be grateful for the *indulgence* that he had for some time. That indulgence should not be a ground of showing him further indulgence at the cost of the landlord.

Clause D is also objectionable in the general form in which it has been put. The rate of rent based upon landlord's improvement should also be taken into consideration even in ascertaining the prevailing rate of rent in cases where the ryot whose rent is sought to be enhanced has derived benefit from improvement. It may be said that in the case supposed the landlord would be able to enhance under clause (*c*). But it is submitted that instead of going over the same question and the elaborate enquiry necessary under section 46 or any other provision that may be substituted in its place, it would be shorter, safer, and more reliable work if the landlord were allowed the option to have the question decided under clause (*a*) of section 43. The expression "with similar advantages" in that clause would cover the case supposed. On the face of clause (*d*) of section 44, no advantage can be taken of the phrase "with similar advantages." Of course it would be prejudicial to the landlord if the

restriction embodied under clause (*a*) of section 44 remain intact and the landlord proceed to enhance rent in the aforesaid cases of improvement under clause (*a*) of section 43 instead of under (*c*). For in that case he does not get the benefit of the whole enhancement in those cases where the rent formerly paid is so low that when raised by 50 per cent. it does not come up to the prevailing rate.

Section 54, *clause* (*b*).—The restriction imposed in the maximum amount of enhancement made on the gound of rise in the average prices by this clause, viz. of 4 annas in the rupee or 25 per cent, is another restriction imposed by way of a set-off.

The unfairness of the principle upon which this has been based has been already stated. Enhancement on the ground of rise in the average prices has been considered by the Select Committee as one which will be the easiest of accomplishment on account of the preparation of authoritative price lists by the Local Government. How far this will be attended with success remains to be seen. But this stringent limitation has been unjustly put upon it in anticipation of any possible advantage that the landlord might derive from this provision. Clause (*c*) of this section is more than a sufficient check. Why should there be a further check? Why should not the landlord get proportionately? It was once before arranged that the limit should be double the amount of the former rent; now it is reduced to its one-fourth on no higher grouud than as a set-off against a possible danger

This curtailment is altogether a novel proposition, never broached before, and has no authority for its support either in practice or in theory.

Clause (*a*) of section 43 gives a very wide discretion to the courts to compare the prices of the five years' rent before the suit with any other five years. These other five years might include years of scarcity when the prices rose abnormally high from accidental causes such as flood, drought, or the like; any comparison with the prices of such years will surely be most prejudicial to the interest of the landlord, and yet there is no provision limiting the discretion of the court in this respect.

Then as to the lists periodically published by the authority of the Government, the clause in question makes them conclusive evidence, and yet everybody knows that no great reliance ought to be placed upon those lists. The statistics are gathered in the most slip-shod fashion and there is none to check or test them. They are published as obtained. They should not therefore be made conclusive evidence of the rates of current prices for the time being.

Section 46 —The elaborate enquiry required by this section is rendered useless by one indefinite phrase put in sub-clause IV of clause (*b*) of this section. The consideration of the ability of the land to bear a higher rent leaves the matter in the greatest possible uncertainty, and the conditional nature of the decree as provided by clause (*c*) leaves an open sore for continual litigation Where the increase in the productive powers has been caused by the sole agency of the landlord the whole benefit of the increase should go to the landlord. The tenant is not entitled to share the profits to the smallest extent. Clause (*a*) of section 75 of the original Bill had such a provision. The same should be retained for purposes of definiteness and certainty. The proposal to limit enhancement to one-fifth of the average annual gross produce in such a case is most unfair and based upon no principle. The increase is merely a return for the advance made. The ryot gets his costs, &c., necessary for utilising the same and he is entitled to nothing more. If any share of the profit obtained by such outlay were to be allowed to the ryot it would at once discourage such improvements. Although the Select Committee did not adopt this proposal, yet they very unfairly made the greatest possible concession by way of compensation for this proposal by imposing stringent restrictions on the other modes of enhancement.

Section 47—Has two restrictions and provides an enquiry indefinite and unworkable in its nature. With the restriction provided by clause (*c*) the further limitation under (*b*) is unfair and unnecessary.

Section 48—May be allowed to qualify only enhancements under clauses (*b*) and (*d*) of section 43. On no account can the question as to whether the rent is fair and equitable arise where the rate to be fixed is the prevailing rate. Again in the case of enhancement on the ground of improvement by the landlords' agency the landlord is entitled to the whole of the increase, therefore no such question arises. It is to be declared fair and equitable by the legislature, and therefore no discretion can properly vest in the courts in such cases

Section 49.—The provision as to progressive enhancement may, from one point of view, appear to be fair; but with other restrictions it becomes most reprehensible and specially so when applied to the cases under clauses (*a*) and (*c*) of section 43. In the case of the prevailing rate being high no such concession should be made to the ryot, and in the case of improvement brought about by the landlord no such indulgence can be shown to the ryot except at the expense of the landlord who is entitled to the full increase. If any such occasion were made to the tenant in such cases then it would be giving him a share of the profits which came into existence otherwise than by his agency. The landlord having paid for the increase is entitled to the whole of it.

Section 50.—Fifteen years' interval is too long a period. If these restrictions are imposed in cases where there has been a private contract with a slight increase, it will check private contracts and draw parties to litigation, a state of things most to be avoided; or it will oblige landlords to exact the last pice from the tenant and to practise the utmost rigour in his dealings with tenants even when they are otherwise disposed to be indulgent. The above observations, it is hoped, will make it clear that the present provisions are in no way improve-

ments on the existing law. The principal difficulties in working out the theory and principle of enhancement remain almost the same. Instead of one set of elaborate and difficult enquiries another set is substituted, and above all the rights of the landlord as enunciated by Act X of 1859 and re-enacted in Act VIII of 1869 are unfairly encroached upon and cut down without any adequate advantages by way of compensation. Novel checks, restrictions, and limitations are imposed upon the principles of enhancement on the plea of simplicity and definiteness, which however might prove wholly delusive.

PRICE LISTS.

Clause 5, *section* 52. The time of 15 days for making any objection to the price lists prepared by the Collector is very short. At least a month's time should be allowed.

Clause (*b*), *section* 54. The reasons why the price of crops only should not be the index for ascertaining the rent of a holding have been always put forward. It is therefore submitted that the word "food" in this clause should be struck out.

CHAPTER VI.

NON-OCCUPANCY-RYOTS.

Sections 55-61.—Why should not a non-occupancy ryot be liable to ejectment when the landlord requires the land *bona fide* for his own purposes?

Why should the expiration of the term of a lease be a ground of ejectment only in cases where the lease has been registered? Oftentimes ryots are let into lands for a specified term under oral agreements Why should verbal agreements be ignored altogether and the ryot exempted from ejectment on expiry of the terms of such contracts. If the rate or amount of rent payable by a non-occupancy ryot can be proved in a court by oral evidence, why should not the term of his lease also be allowed to be so proved? The last sentence of clause (*b*) of section 58 does not presuppose the existence of a *written* contract. When the breach of such a condition as under the Bill entitles the landlord to eject the ryot, can be contracted for orally, why cannot the term of a lease be allowed to be contracted for likewise? The provision contained in section 59 that no suit to eject a non-occupancy ryot shall be instituted six months after the expiration of the term of the lease is very hard and objectionable. Regarding enhancement of the rent of a non-occupancy ryot the adjustment should have been left to competition. Instead of that he is placed by sub-section 9 of section 90 exactly in the same position and allowed the same advantages with an occupancy ryot, and in a better position enjoying greater advantages than a tenure-holder enjoys (*see* section 8).

CHAPTER VIII.

Section 64.—The objectionable nature of this presumption has been so clearly shown by high authorities that a discussion of it must necessarily involve a repetition of arguments more or less familiar. If the presumption were prejudicial to the landlord when it was first enacted in Act X of 1859, it would be more so if it were reproduced without any limitation or restriction now in 1884. To keep the twenty years a constant quantity to be calculated backwards from the date of every suit in which a question of the fixity of rent is raised, would give the tenant an undue advantage over his landlord. If the retention of such a presumption is a foregone conclusion it is submited that it may be restricted so as not to prejudice auction purchasers who having regard to the peculiarity of their position would be quite incapable of adducing any rebutting evidence to meet the presumption in favour of the tenant. In this class of cases it is desirable that the 20 years should be calculated back from a definite and prescribed point of time. The most unobjectionable point of time would be the date of enactment of Act X of 1859.

Section 66.—This section applies not to ryots but also to permanent tenure-holders. It allows landholders to impose an additional rent in case of increase of the area of a tenure and entitles tenure-holders to claim abatement of rent in case of decrease of area of the tenure caused by diluvion or otherwise. It does not make any distinction in this matter between tenure-holders at a fixed rent and those held at a variable rent. So far the landlord and the tenant are both equally dealt with. But coupled with clause (*f*) of section 210 it becomes an unfair and an one-sided provision. Clause (*f*) favours the tenant and looks to his interests only at the expense of the landlord. Section 210 together with section 66 saves all contracts by which the landlord may have agreed not to impose any additional rent for excess lands gained by alluvion or otherwise. But it nullifies all contracts by which the tenant may have agreed not to claim any abatement or reducti n of rent in case of decrease of area on account of diluvion or from other cause. Is this fair? Why should not there be a mutuality in contracts? Why should one party be bound by a condition when another condition which is the consideration for the other should be declared null and void. In all cases of tenures wherever there is a condition that there is to be no reduction of rent on account of decrease of area, there is always found a similar condition in order to counterbalance the prospective loss of the tenant by which the landlord binds himself not to claim an increase of rent for increase of area. The landlord foregoes the right only in consideration of the covenant made by the tenant that he would not claim a reduction The two conditions together ensure the same invariable rent to the landlord at all times and under all circumstances. But the present Bill, while holding the landlord liable on the covenant in favour

of the tenant, proposes to grant immunity to the tenant for the consequences of the covenant in favour of the landlord. The retrospective effect proposed to be given to these provisions will undo old and legal contracts, and make uncertain and variable rents hitherto known as fixed and invariable. In short, this provision will ruin the landlords. The existing law on the subject cannot be said to be hard upon the tenant. He can, if he chooses, allow the tenure to be sold for arrears of rent, and if the tenure is a losing concern, it will come into the hands of the landlord and relieve the tenant from further loss.

Section 69—Is also an objectionable provision. No tenant should be allowed to force the landlord to accept rent of a subsequent period keeping the older rent in arrears. It will cause difficulty in the realisation of rent and produce confusion in the landlord's accounts The declaration of the tenant accompanying any such payment required by this section may be oral, and this will incline unscrupulous landlords as well as tenants to make false statements in this matter and be productive of dispute and litigation. What particular advantage this provision is intended to secure to the tenant it is not easy to find out.

Receipts and Accounts.

However advisable it may be to force landlords to give unequivocal receipts to the tenants and keep proper and correct accounts, to force them to mention in every receipt all the particulars of the tenant's holding and even the quantity of lands held by him, together with the details about Bunker, Julker, and Phulkar, would hamper the collection of rent and make it a costly affair. The penalty for even an accidental omission or mistake is also very great.

And what is the advantage the landlord gains for all the trouble and expense incidental to such a system of collection? None whatever. He cannot realise his rent as the Government does by issuing a certificate. His demands are as much liable to be contested under the present Bill as they are under the existing law. Not so much as a presumption is created in his favour. Why then all these forms, all these pains and penalties?

Deposit of rent, clause (*b*) of section 73, is very vague and indefinite. It allows the tenants to avoid payment of rent to the landlord and deposit the same whenever he chooses. This will lower the landlord's prestige and make the relationships of landlord and tenant more artificial than it is even at present.

There should be some provision in the Bill by which the tenant would be bound to make a verified application on such an occasion. This might operate as a check on tenants inclined to drag their landlords to court, by resorting to it themselves. The words "payable by the tenant and" in sub-section 3 of section 74 may be the cause of creating some ambiguity in the meaning of this sub-section. The sense would be clearer if those words were omitted. The sub-section as it stands might be contended to mean that the receipt will act as a full acquittance for all the rent that may be payable by the tenant down to the period for which the deposit may be made. While on the subject of deposit, it is proper to make here some observations necessary relating to the limitation of suits for arrears of rent where a deposit has been made.

Schedule IV, Part I, Article 2.—Clause (*a*) provides that a suit for the recovery of any arrear of rent down to date of deposit must be brought within six months from date of the *deposit*. Under the existing law such a suit may be brought at any time within six months from date of the *service* of a notice of the deposit on the landlord. This notice is served upon the receipt of the deposit. The present Bill does away with the provision of serving a notice on the landlord in the first instance. At first a notification is provided to be affixed in the office of the officer receiving the deposit. Then if no one appears and claims the deposit within 15 days from the date of the aforesaid notification, a notice will have to be served on those who may be deemed entitled to the deposit.

It is clear that the landlord is not at all likely to know of the deposit until a notice has been served on him. The notification in the office is almost useless. There being no time fixed within which the notice is to be served on him, it may be served a very long time after the deposit. This will undoubtedly prejudice the landlord, who may have to contest the fairness and propriety of the deposit. There seems to be no reason for a change in the existing law and for the curtailment of the period of limitation on the subject.

CHAPTER IX.

Improvements.

Regarding the registration of improvements one observation is necessary. The landlord should not be compelled to register improvements effected before the present Bill is made into law. It would be very hard upon the parties if they were to be forced to have such improvements registered, and that within 12 months, as provided by clause (*a*) of sub-section 3 of section 91, after the commencement of the Act.

The abovementioned clause (*a*) taken with clause (*a*) of section 46 of the Bill will virtually preclude enhancement on the ground of improvement made at any time before the Act. The registration of such improvements will open a wide channel for litigation. Instead of imposing such a heavy penalty for non-registration of improvements made before the passing of the Act, the matter may be left optional with the parties—and the clause relating to the limitation for registration of such improvements expunged.

Section 90, taken in conjunction with section 93, will entitle every non-occupancy ryot to build pucca houses and excavate tanks, and enable him to do so without any risk of ejectment. Now-a days an occupancy ryot cannot do such things except on payment of a salami to the landlord. These sections, if passed into law without any restriction, would not only take away part of his legitimate gains from the landlord without any adequate compensation, but leave him under a prospective liability to a heavy compensation to the ryot for works done against his will in cases where he wishes to eject him on reasonable grounds. This is undoubtedly very hard on the landlord. A non-occupancy ryot should not be allowed such privileges at the expense of the landlord.

Surrender and abandonment.

Some provision should be made allowing the court to presume surrender in case of dispute; and voluntary abandonment of cultivation for a year, except in certain exceptional cases as provided in clause (*a*) of section 37, without payment of rent, should be presumed to be a surrender of the right and interest of the ryot in the holding until the contrary is proved.

Measurements.

Why should not the landlord be allowed to measure his own lands at his own cost whenever he chooses? Why should he be restricted in doing it for a period of ten years following one measurement? How is he to ascertain any encroachment that may have been made by a tenant on the surrounding waste lands or on the lands of a neighbouring ryot? Why should an auction purchaser be barred if he chose to measure the lands purchased by him more than two years after his purchase? The restrictions referred to above are most arbitrary and utterly subversive of the landlord's rights. These restrictions are based upon no sound principle or policy and are altogether unwarrantable.

There are various reasons other than those mentioned in clauses (*a*) and (*b*) of sub-section 2 of section 9 which necessitate a measurement of lands by the landlord. To limit the landlord's right to measure to those cases only would therefore be very prejudicial to him.

Managers.

The provision relating to managers will deal a death blow to the coparcenary estates of the country. It is well known that the largest portion of the landed interest in the country is held jointly by co-sharers The present Bill, instead of facilitating the realisation of rent by co-sharers, reproduces some provisions of a Regulation almost obsolete and well nigh forgotten and about three quarters of a century old. With so many provisions in the Bill for protection of the ryot's interest, these provisions about the appointment of managers are perfectly unnecessary These provisions, if re-enacted, will *denest grabi patio* of the landlords of the management of their estates.

Much has been said on this subject from time to time, so instead of entering into the details a humble protest is submitted against the enactment of these provisions.

CHAPTER XI.

Tables of Rates.

Sections 123-134.—There will be found so many varieties in the classes of land and in the rates of rent payable for the same even in adjoining localities, not only on account of difference of soil and situation of the lands and such other causes, but also on account of the kinds of crops cultivated in the lands and the classes of tenants holding the lands as well as on account of peculiar customs prevailing in different localities relating to the holdings, that it will be almost impossible to prepare one set of tables covering and governing a large area.

The chief advantage proposed to be gained by the preparation of these tables depends upon their general applicability in all classes of cases. In order to obtain that, either some existing differences and distinctions too difficult to be embodied in a general table must be arbitrarily ignored and done away with, at the expense of either the landlord or the tenant, or numerous sets of tables must be prepared at an enormous cost and with great delay. It is not unknown what a long time the butwarra of an estate takes; and at least one of the causes for it is the classification of lands and their assortment by comparison How much more difficult, dilatory, and expensive the preparation of the proposed tables will be when made applicable to large tracts of the country it is easy to imagine. For the above reasons it is apprehended that the utility of the tables will not be very great; and the making of these conclusive evidence of the rates will be very injurious, when brought to bear upon questions raised in particular cases.

The preparation of these tables, when made for large areas, will not excite particular interest and invite all the necessary objections, nor their details be discussed with that amount of care and precision as the nature of the case requires In matters of public and general interest the people of the country are yet apathetic; so these tables will generally be made *ex parte*, published, and confirmed, and their injurious effect known and taken notice of at a time when there will be no chance of any amendment.

The proviso contained in section 125 is not only unfair but will act most injuriously to the landlord when he will have to enhance rents on the basis of these tables. The restrictions embodied in the sections relating to enhancement of the rent of occupancy ryots regarding the maximum limit will then necessarily be super-added to the restriction made by this proviso. The tables will have been prepared after a considerable concession has been made to the ryot, and then when these will be applied to particular cases, another concession will have to be made.

CHAPTER XII.

Record of Proprietor's private lands.

Sections 135-138.—The law and procedure prescribed for the record of proprietor's private lands are unnecessary and expensive. In cases of dispute as to whether a particular piece of land is the private land or not the civil court may be left to decide the question.

A serious objection is taken to the most arbitrary restriction imposed by section 138 upon the creation of khamar lands, and as it is submitted that the landlord should be allowed to retain the right to create khamars from time to time as occasion may arise, the provisions contained in sections 135 to 137 become not only unnecessary but also impossible for being worked out.

It is submitted that the restriction proposed to be imposed upon landlords is most arbitrary and is a distinct invasion upon their proprietary right.

CHAPTER XIII

Distraint.

Sections 139-158 —Although the realization of rent by distraint is not much in vogue in East Bengal, and although the restrictive measures proposed will not therefore be very much felt by the landlords of East Bengal, yet it is necessary to object on principle to the procedure provided by the Bill.

The only important change made in the present Bill from the original Bill of 1883 is the reduction of the amount of court-fee payable on an application for distraint.

The procedure prescribed is far more lengthy and costly than that under the existing law. The most important right which the landlords had of distraining the standing and ungathered crops, of their own motion and by their own process, is taken away, without giving them any the least facility for the collection of their rent.

In short the object of the law of distraint, viz speedy and least expensive mode of realisation with the least harrassment of the tenants, is entirely lost by the procedure adopted in the Bill. Hence the proposed provisions, instead of being any improvement on the existing law, make the very important and valuable right of distraint so long enjoyed by the landlord altogether useless for them.

What is named as distraint is virtually a suit for arrears of rent with attachment before judgment, and with this disadvantage, that while in a regular suit for rent the landlord can sue for the whole arrears, under this process he can sue for only the arrears of the current year.

CHAPTER XIV.

Judicial Procedure.

Sections 159-174.—As already pointed out, it was one of the main objects of the original Bill of 1883, which has been revised and cast into the present shape by the Select Committee, to give reasonable facilities to the landlord for the recovery of his rent. The agitation which led to the consideration of the whole question of the law of landlord and tenant in Bengal, and caused the submission of different measures on the subject from time to time, was also based principally upon this question. The procedure relating to the recovery of rents is therefore *the* portion of the bill with which the landlords are principally concerned.

Although the Select Committee have bestowed their anxious consideration on the subject in question, it must be said however that no satisfactory result has been obtained.

If arrears of rent must be recovered by a suit only, it is evident that the legislature cannot make realisation sufficiently speedy, though the procedure for such a suit may be a good deal summarised. In every suit there must be the issue of summons, proof of service where the defendant does not appear, proof of the claim, the framing of the decree, and its enforcement either by arrest or attachment. The defendant may appear and contest service of the summons and the demand, and the suit becomes contentious. Where the defendant appears at the original hearing and contends the demand, evidence on both sides must be gone into and there must be a sifting enquiry before decree. The abovementioned procedure must be followed more or less in detail, and however much may the details be cut short, in practice it will be found to take always more than three months, and very often six months, before a decree is obtained in contested cases. The legislature cannot sufficiently form an idea of the practical difficulties which hinder the speedy trial of suits Process after process may be taken for the attendance of witnesses and the case delayed. The Judge adjourns the case from time to time to suit his own convenience, and the party who has his witnesses in attendance has got to drag

himself to court from day to day and bear the costs incidental to such attendance. The Moonsifs are heavily pressed with work and much fault cannot be found with them. Knowing fully well that a case will not be taken up at the first hearing, oftentimes the witnesses do not appear even when they could, and as often the witnesses do not allow parties to take out fresh processes as a matter of course. Whoever has carefully looked into the procedure of suits in a court of first instance will bear out the truth of the statements made above. Then after the decree there comes the appeal against such decree; that also takes up at least three months' time, even in cases of rent suits of the nature of small cause court cases. How then can the landlords be satisfied with only a partial abridgment here and there of the lengthy procedure of a suit. The rules that the High Court may frame under section 159 and the effect such rules may have on the procedure of rent suits it is not possible to conjecture.

Section 159—Simply avoids the difficulty for the present—and throws the whole burden and responsibility on the High Court.

Sections 164 *and* 165—Are the only two sections enacted in the interests of the landlord and which distinguishes the procedure for rent suits from that for any other suit. But the benefit likely to flow from them is nominal. They will not induce the tenant to admit anything substantial.

Then again the effect of the above sections will be well nigh neutralised by section 166, which gives a very wide discretion to the court to allow the tenant to pay even the admitted amount by instalments. There should be some provision in conjuction with section 165, under which the landlord may be able to take out the money immediately after it has been deposited.

The taking away of the right of appeal in rent suits will not mend matters much, and on the contrary may be prejudicial to both parties.

It should however be provided that no application for retrial of a suit decided *ex parte* nor an appeal shall be admitted when filed by a tenant, until the amount decreed has been deposited in Court.

When the Bill makes such stringent provisions relating to receipts of rent and accounts to be kept by the landlords at a great cost and trouble, it would be fair and an act of bare justice to allow them some substantial advantage in the shape of a speedy method for realization of their rents.

The only two modes now in existence are the summary sale procedure and the certificate procedure. Both these procedures may with certain modifications be made equally applicable to the case of occupancy ryots and the last, *i.e.*, the certificate procedure, may be applied to the case of non-occupancy holdings. Very heavy penalties may be imposed upon landlords for the abuse of any of these rights.

Without any of these procedures the realization of rent will remain as difficult in future as it is now.

Section 170—Eventually does away with all ejectment suits, and gives an undue advantage to the delinquent tenant.

The requisition on the part of the landlord prescribed by sub-section I of this section is perfectly unnecessary. No landlord is likely to rush into court if there be the smallest chance of settling the dispute amicably.

The words "reasonable compensation" and "reasonable time" used in this sub-section are very indefinite. These, together with the provision relating to requisitions, will undoubtedly raise unnecessary difficulties to the entertainment of a suit for ejectment. And oftentimes these preliminaary objections will prove fatal to an otherwise good cause. These provisions will increase the mass of evidence and make cases more lengthy and costly.

If the tenant has forfeited his holding by acting against his landlord, he should not be allowed any indulgence on these preliminary grounds. Sub-sections 2 and 3 will only prolong litigation between the parties and make the relationship between the parties more inimical.

Sub-section 3 and the provision relating to requisitions should, however, on no account be retained.

The words "contrary to local usage" used in clause (*c*) of section 171 at once neutralises the whole effect of the clause, opens a wide door for dispute, and makes the provision altogether indefinite and vague.

CHAPTER XV.

Sale for arrears under decree.

Sections 175-193—All transferable holdings are hypothecated for their rent. It has been also declared by the present Bill that the rent of such a holding is a first charge on the holding (section 77).

Hence, when a decree for arrears of rent has been obtained against such a holding, that decree may be looked upon in the light of a mortgage sale decree passed under the Transfer of Property Act. In execution of such a decree no attachment need be made. It may advantageously be provided that only a sale proclamation shall be needed in such a case. It would save a great deal of time, and be less costly.

If the circuitous, dilatory, and expensive procedure relating to the sale of these holdings be retained, by which in the first instance all registered and notified incumbrances are

protected and rendered liable to cancelment at the desire of the auction purchaser only in case of a second sale, the first sale failing to fetch the decretal amount, it would be only fair to do away with the process of attachment in order to counterbalance the delay and cost that would be caused by the abovementioned procedure.

The abovementioned procedure relating to the sale of a holding twice over and the provision that the auction purchaser will have to annal encumbrances by a particular act within a particular time appear also to be unfair. With the provisions embodied in the Bill for the protection of under-tenures, and sub-tenancies by payment of the arrears due, it would not be at all unfair to sell the holdings at once free from all encumbrances, excepting those mentioned in the Bill as protected interests. Such a provision would be in keeping with the existing law both as to sales for arrears of revenue of estates as well as to sales for arrears of rent of transferable tenures The change in the existing law on the subject will only add complications, and will have a tendency to make the realization of rent insecure and dilatory.

If the abovementioned provision be retained there will be another inconsistency. When a patni tenure will be sold under a decree for arrears of rent, it will be sold subject to the registered and notified encumbrances; when the same tenure will be sold summarily under Chapter XVI, the auction purchaser will have the power to annul such encumbrances. This distinction will be productive of confusion and loss to the parties concerned. No particular object is gained by creating these anomalous distinctions. No particular objection would be taken to section 182, as objection has already been taken to the conversion of occupancy holdings at a fixed rent or rate of rent into tenures.

There is a further objection to the limitation prescribed by section 184 for the annulment of encumbrances. One year from the date on which the auction purchaser first has notice of the encumbrance is rather short and very indefinite. The question when he had notice will be a matter of hot dispute. Again, where the auction purchaser is the decree-holder himself, his right may be barred before he becomes the purchaser. He may have received notice of the encumbrance under section 198 more than a year before the tenure is brought to sale. Hence if any limitation is to be prescribed it should be within three years or at last two years from the date of confirmation of the sale irrespective of the question of notice.

When objection has been taken to the general principle of the sale of tenures, once subject to encumbrances and again with power to annul them, it is needless to say that section 185 is very objectionable.

The provision that the landlord is at the most entitled to the rent of only six months out of the period intervening between the institution of a suit for arrears and a sale in satisfaction of a decree in such suit is most arbitrary and unreasonable. It is well known that a tenure or holding is not likely to be sold within this short period of six months. And supposing it is sold within that time it would be at least two months if not contested, before the sale is confirmed. The auction purchaser's rights and liabilities will commence from the date of confirmation of the sale. Hence, why should the landlord be defrauded of his just arrears, when the security for the payment of the same is lost by the sale. The only just provision that can be made on the subject is that the decree-holder will be entitled to have the arrears that may accrue from the date of suit down to the date of confirmation of the sale.

Section 192 is a most objectionable provision. It will not only act as an incentive to the creation and setting up of false encumbrances but be a license for the same. It will be a fruitful source of dispute and litigation, ruinous to the ryots themselves, and detrimental to the interests of the landlords.

CHAPTER XVII.

The objectionable nature of the restrictions on contract and of the retrospective effect given to such restrictive provisions have been incidently commented upon. It is therefore needless to repeat what has been said. Suffice it to say that the provisions contained in section 210 are most arbitrary, unfair, and one-sided. In short, the provisions are neither based upon any good policy nor can they be supported upon any sound principle. The ryot has full liberty to mortgage, sell, and sub-let his holding on any terms he may choose. He can make any terms in case he is granted a permanent mokrari lease, yet he cannot be deemed capable of making any contract that may trench upon some particular provisions of the Bill. This surely is unwarrantable and indefensible.

Section 216—Will not, as is supposed, cover all cases of homestead lands of ryots.

*The Bill is admittedly silent on the question of bastu lands of tenants other than ryots; nor does it make any provision regarding such lands held by tenure-holders, when the same is not held as part and parcel of the tenure. Perhaps it is understood that this last class of cases falls within the division of bastu lands held by tenants other than ryots. There are various incidents attached to homestead lands. To leave all these incidents to be settled wholly by local custom may not be very advantageous to the parties concerned.

No. 84, dated Calcutta, the 12th September 1884.

From—BABOO PEARY MOHUN MOOKERJEE, Honorary Joint-Secretary, Central Committee of Landholders of Bengal and Behar,

To—The Secretary to the Government of Bengal, Revenue Department.

I HAVE the honour to acknowledge by direction of the Executive Committee of the Central Committee of Landholders of Bengal and Behar the receipt of your letter No. 6T—R of 28th May last, and submit herewith in a separate cover notes and comments on the several sections of the revised Bengal Tenancy Bill for submission to His Honor the Lieutenant-Governor.

2. The notes have not yet been adopted by the Central Committee at a meeting, and it is probable that a few slight alterations and additions may be made before they are finally approved, but as His Honor the Lieutenant-Governor is about to close his report, the Executive Committee deem it expedient to submit them in their present form. They have every reason to believe they substantially set forth the opinions of the Central Committee on the provisions of the Bill, and indicate also the views expressed by landholders throughout the province at the numerous meetings held for the purpose of protesting against the provisions of the Bill.

3. In thus submitting before Government detailed criticisms on the Bill, the Committee desire to lay before His Honor their respectful but earnest protest against the general principles which underlie the proposed legislative measure. Into a discussion of those principles they deem it unnecessary to enter at present They feel they would be treading upon trodden ground and indulging in repetitions if they were to undertake the task again, but justice to themselves and to the important public interests confided to their charge demands that they should place before Government their respectful protest against the enunciation of doctrines of landed rights which are wholly unknown in this country and which essentially militate against both the spirit and the letter of the great code which defines their rights and privileges It is against the repeated interpretations of the same by the Legislature, by the highest courts of justice, and by some of the highest officers of Government.

4. There has been, the Committee very much regret to say, great delay in the submission of their views on the Bill. Your letter under acknowledgment was received by their late lamented Secretary and mislaid during his last illness, and it was discovered only after his death when search was made for his office papers. The Committee beg to tender their sincere apologies for the unfortunate circumstance.

NOTES ON THE REVISED BENGAL TENANCY BILL.

Section 3, *definition No.* 5.—The definition of rent should be altered with a view to provide for cases in which the ryot is deprived of the use and occupation of the land by an act of dispossession committed by a third party—a circumstance which does not legally affect his liability to pay rent. Or it may be that a lease is taken, or an engagement of some kind is made, for the use of land, but afterwards circumstances, not due to any act or neglect of the lessor, might intervene to prevent the lessee from using or occupying the land, such as want of capital to build a hut or to cultivate the land, and in such cases the penalty should rest with the party who fails, and not with him who is deprived of the rightful use of his land by the failure of the defaulter.

Definition No. 10.—"Transfer" should not include mortgage; otherwise a mortgagee without possession would have the right of getting his name registered in the zemindar's sherista.

Section 5 (1).—For reasons stated under section 37 the words commencing with "and the persons" should be omitted.

(2) The words "subject to section 37" should be omitted; and the title of successors of those who originally acquired land for the purpose of cultivating it to be themselves called ryots should be qualified by the condition of his holding the land for agricultural purposes. A person who has established a mart or a factory on his land, or who uses it for the purpose of brick-making, would, under this definition, be a ryot if his ancestor came into the possession of the land for the purposes of agriculture.

(4) *and* (5) These clauses would simply tend to create confusion as to the meaning of a "tenure-holder" and "a ryot." The definition of the terms given in clauses (1) and (2) is, subject to the observations made above, clear enough, and is consonant to the use of the terms in ordinary practice. It is essential that there should be a clear line of distinction between the two classes, and no inducement should be given to efface that distinction and to create complications by allowing evidence to be gone into of the existence of the alleged custom or of the area of land in a holding which has been sublet. A tenure is and must necessarily be a creation of the proprietor or of a superior tenure-holder, and as a ryoti holding is inferior to the interest of a tenure-holder, it would be an anomaly if a tenure could ever be created by an act of the ryot. These two clauses should therefore be omitted.

Section 7 (1).—The word "prevailing" should be substituted for the word "customary" in this clause. The word used would not only be unjust to the zemindars but would also lead to vexatious enquiries which may be easily avoided.

Section 7 (3).—The margin of profits proposed to be given to tenure-holders is very larger—much larger than what the courts have been accustomed to give them. Besides, an enquiry into the particulars mentioned in this clause will simply lead to increase of litigation and introduce considerations, as *e.g.* "risks of collection" which have been hitherto reckoned to be altogether foreign to the enquiry.

Section 9.—Provision for gradual enhancement of rent is altogether incompatible with the very nature of the case. When a landholder is declared entitled to get enhanced rent, he should get it without delay. It would be difficult to determine what considerations should influence the court on the ground of hardship to the tenure-holder. It was very properly remarked by Lord Bramwell that he could not see "what could be taken into account really under such a clause as that." This section should therefore be omitted.

Section 15 (3).—Nothing would be easier for a transferer or transferee of a tenure to allege refusal on the part of the landholder to register the transfer and thus to recover from him a heavy penalty. It is due to the landholder that no suit should lie for the recovery of the penalty until after a notice of application for registration has been served through court.

The Bill is altogether silent with reference to an important point connected with registration of transfers. The number of persons, male and female, owning shares in a tenure or holding is often very large. Should the landholder be bound to register the names of all who shall apply to him for registration? It should be remembered that in suits for arrears of rent he would be bound to sue all persons whose names are on his record, and that a rule for registration of names without any limit of number would indefinitely prolong the trial of rent suits, and increase the costs of litigation.

Section 20 (1).—The decree mentioned in this clause is evidently a decree for arrears of rent due in respect of a tenure, and not any decree for money; the language should be made clear and unequivocal.

Section 20 (3).—As provided in section 15 (3) a corresponding provision for recovery by the landholder of penalty from the transferee for neglecting to register the transfer or succession should be made.

Section 23 (*a*).—The proposal to give ryots holding at fixed rents or rates of rent the privilege mentioned in (*a*) and (*b*) is fraught with incalculable confusion and mischief. If it were provided that the privileges in question would attach to all ryoti holdings, which are by virtue of registered contracts protected from enhancement or which have been declared so by judicial decision, the matter would have been different, but as it is, who is to judge whether a ryoti holding is or is not held at a fixed rent or fixed rate of rent? In 999 suits for enhancement of rent out of every 1,000 the ryots claim their holdings to be protected under section 4 of the Rent Law. No occupancy ryot would be so unmindful of his own interest as to admit his holding without any sort of struggle to be not protected from enhancement by giving his landlord a right of pre-emption when he wishes to transfer his holding. The effect of the provision under notice would therefore be that, with the exception of that inconsiderable number of holdings which have been judicially declared to be not protected from enhancement, all other holdings will be capable of being freely transferred in spite of the landholder. The landholder will have no pre-emption in such cases. He may of course contest by a suit the validity of such transfers, but to what an alarming position would he be drifted if he were called upon without a moment's notice to prove scores, perhaps hundreds, of holdings to be not protected from enhancement? He will not be allowed his own time to decide when he will sue a ryot for enhancement of rent. He must, without any notice, accept a stranger as his ryot, and also give up for ever his right to enhance the rent of a holding, or institute suits to establish his right to enhance with the inevitable prospect of a defeat.

Section 25.—The rights vested in what are called settled ryots are clear infringements of the rights of landholders, and they are as such very objectionable All the evil effects of these new provisions it is not possible to foresee at once. It is clear that one of the effects of the instantaneous growth of a right of occupancy in a settled ryot in regard to all land let to him would be (*see* section 96) to create great uncertainty of title in ryoti land, and therefore to increase litigation to an alarming extent.

Section 26.—This section gives settled ryots rights much larger than those proposed to be given by the original Bill. In joint Hindoo and Mahomedan families the number of co-sharers, male and female, in a ryoti holding is usually very large, and some of them may be living for years far away from their ancestral homes. The extension of this privilege of a settled ryot to each and every one of them would not only lead to great confusion and conflict of rights to the detriment of the ryots themselves, but it would also be a novel and very objectionable encroachment upon the rights of landholders. Again, clause (6) goes much further than the provision contained in section 96. In proposing that after a ryot has ceased to hold land in a village as a ryot he shall continue to be a settled ryot of a the village, the clause involves a clear anomaly. A person cannot cease to be a ryot and be a ryot at one and the same time. But section 96 does not allow the ryot to return to his holding in every case before the expiration of a year. Even if the ryot abandons his residence after the middle of a year and fails to cultivate, &c., the landlord would have a right to enter or let the holding to another. The following clause is still more objectionable: it would lead to results which it is easy to foresee. A ryot may sue to recover possession of land just before the expiry of the period of two years, and the final determination of a suit so instituted may take years, during which time a new ryot, if a settled ryot of the village,

has acquired rights and perhaps spent money in making improvements. The proposal to raise a presumption of occupancy in favour of the ryot in every suit or proceeding involves a novel inroad upon the rights of landholders. Nothing is more easy for a ryot than to prove residence in a village or possession of a land for 12 years, not at a remote period, but immediately before suit, and yet the Bill proposes to raise an unjust presumption and to throw the burden of proving a negative on the landholder.

Section 27 (*a*) —The word "village" should be more accurately defined with reference to its fiscal constitution. It frequently happens that the geographical boundaries of a village contain the lands of a second and third village belonging to a different estate and owner, or separate and defined parts of a village belong to different estates and owners. The definition of the word here given would therefore give as against a proprietor a right of occupancy and that of a settled ryot to persons who had never before held land in the village or estate belonging to that proprietor. This would be an extension of the right which is neither sanctioned by the Secretary of State nor contemplated by the framers of the Bill Many villages have so grown up as to have combined into one, bearing in such cases a compound of two or three names, and others may do so; some have grown up into towns of considerable size, whereas the principle on which the provision is justified is that the holdings are contained in the same village or part of a village as is owned by a single proprietor. Clause (*b*) of the section shews this clearly, but with a different object as objectionable as this.

Section 27 (*b*).—Considering the purposes to which the word estate has been used in subsequent sections, the definition of the word here given is very objectionable The arbitrary meaning, opposed to the hitherto prevailing acceptation of the term and to its definition in section 3, attached to the word by this clause will lead to great confusion, while the inroad into proprietary rights which it involves is great. The effect of this section would be that a person who has never held any land under A, but who has held land for 12 years under B—perhaps an enemy of A—will be deemed a settled ryot of A's estate, if at any time subsequent to 1853 the two estates formed, or formed part of a parent estate. Some estates which formerly comprised lands in two or more districts have subsequently to 1853 been partitioned, but on that very ground this section would deem a ryot of a village in Burdwan a settled ryot of a village in Hooghly, which is more than 60 miles apart, and which he has very likely never seen in his life. The danger of a theoretical rule, conceived in utter ignorance of existing circumstances, could not have been better illustrated. What again would be the effect of the interpretation in question with reference to section 25? It would be simply this, that a person who has held land under a landholder for a few days would acquire a right of occupancy if he had held land for 12 years in a distant estate which once formed a part of the same estate as his. An examination of the nature and origin of estates would shew how harmful the proposed definition would be. An estate of the Maharaja of Burdwan is composed of villages scattered in five or six districts The Bill certainly distorts the views on this point of the Secretary of State, who evidently refers to partitions of estates in future when he remarks "it will be necessary in actual legislation to provide that this right is not forfeited by any sub-division of estates and alteration of village boundaries" The bearing of the law in regard to the sub-divided estates called sikmis or lots created by Government will be even more injurious. One great objection to this section, and the portion of the Bill which depends upon it, is that in reality it seeks to give rights to pyecast ryots at the expense of khodecast ryots.

Section 31(*a*).—If a ryot establishes a mart on his land or sets up a *surkee* mill upon it, he will not lose his right to the land, because by such act he does not render the land "unfit for the purposes of the tenancy." This is opposed both to existing law and custom. A ryot should not have it in his power to use the land for other than the purposes for which it was let. Again, a ryot may use the land in a manner which does not render it unfit for the purposes of the tenancy, but, nevertheless, deteriorates the quality and value of the land. For obvious reasons such deterioration should not be allowed.

Section 31(*d*).—In omitting to provide for ejectment for non-payment of rent the Bill takes away a remedy which landholders have not only all along enjoyed, but which is necessary for the recovery of their rents. It would be found on enquiry, if one were made, that in a very small number of cases indeed have the landholders availed themselves of this remedy, and that in a large majority of the cases in which decrees were obtained for ejectment, the lands have been re-let to defaulting ryots after some arrangement for the payment of the arrears have been come to. It is the existence of the remedy which serves as a check to habitual and wilful non-payment of rent, and its absence can not but give rise to mischief.

Section 31(*f*).—This section gives ryots a right of free sale of occupancy holdings. This would be as unjust to the zemindars as it would be ruinous to the ryots. It deprives the landholder of his right of choosing his own ryots. It requires no great experience of mofussil life to see that the learned Chief Justice is quite right in considering this to be "far from a sentimental grievance." A provision which allows ryots to thrust upon a landholder as his tenants persons who are his avowed enemies, or who are notorious bad characters, and who would therefore in all likelihood create disaffection and combination among his other ryots, place obstacles in the collection of rent commit breaches of the peace, and sow the seeds of discord among a peaceful community, affects most materially the proprietary rights of the landholders.

Nor are the evils apprehended or likely to arise from the working of the law to be confined to the landholder only. The ryot is for certain to suffer from them even more grievously.

Whereas now they have permanent tenures which they cannot be deprived of in any way, except by their own default in paying rent, and their sons and grandsons and successors without limit may inherit, and always remain owners of their ancestral fields, under the new law they will be liable to and practically will soon be reduced to day-labourers, and their fields will pass to middlemen, thus defeating the primary and professed object of Government, namely to better the condition of the ryots. Our conviction in this respect is firm, formed as it is by our thorough personal experience of the country and the condition of the poorer classes. Nor is this belief unshared by the governing classes Mr. Ilbert, when introducing the Bill, in adverting to the power of sub letting, remarked: "The powers of sub-letting which the Bill recognises may in time lead to a state of things in which the great bulk of the actual cultivators would be not occupancy ryots but under-ryots, with but little protection of the law" (page 291). The power of free sale will greatly hasten this consummation. Simple occupancy rights are held by persons who are in a majority of cases very poor, and who have no resources to fall back upon in seasons of agricultural distress. The result of such a rule would be that within a few years the holdings will change hands, a number of middlemen will come into possession of the greater part of the holdings of every village, while the original ryots themselves, who are believed to be the objects of so much tender solicitude on the part of the Legislature, will be reduced to the condition of day-labourers, or of under-tenants paying rack-rents to their superior holders.

The learned Chief Justice has observed "that to give a poor population like the Bengal ryots the means of selling or mortgaging their tenures at pleasure is a very certain means of making them improvident. I should have thought that the most effectual way of protecting such people, and preventing them from wasting their substance, would be to secure them a permanent interest in their property, by prohibiting the alienation of it in any shape or way." The truth of these observations have been painfully illustrated in a large number of cases. Whatever may be the custom in some of the eastern districts, the sale of ryoti holdings, even with the consent of the landlord, is very limited in the western districts. It is mostly those holdings in respect to which the right of sale is expressly reserved by a lease that are now and then sold in the western districts; but when the landholder neglects his own interests, or when the proprietor is an infant or a widow, or when by reason of long continued litigation among the different co-sharers of property the management is left entirely in the hands of the local agents, it is then that opportunity is taken by money-lenders, traders, and others to buy up ryoti holdings, not for the purposes of cultivation, but for letting the lands, in most cases to their vendors themselves, at a large profit. The purchasers become middlemen and the original ryots become korfa or under-tenants with no rights at all, and are placed entirely at the mercy of their superior holders. In the Resolution of His Honor the Lieutenant-Governor on the administration of Sonthal Pergunnahs, dated 21st July 1884, and published in the Supplement to the *Calcutta Gazette* of 23rd July last, His Honor remarks—

"The attempts to restrict the transfer of tenancies by cultivators are stated, however, to have been fruitless. On this point the Deputy Commissioner observes that "the evil has attained such magnitude, and constitutes such a real danger, that nothing short of the extension of the prohibition against transfers prevailing in the Damin-i-Koh to all Sonthal land in the district will now cope with it" An interesting account of the origin of this practice is given by Mr. Oldham in paragraphs 34—44 of his report. Previous to 1878, sales of land by Sonthals, or by mere cultivators, except in one pergunnah of the Rajmehal sub-division, were unknown, the reason being apparently that in the Damin-i-Koh transfers were prohibited, while in other parts the cultivators were either mere tenants-at will, or, if they had rights, could find no purchasers. In the year above mentioned, however, Mr. Boxwell, the then Deputy Commissioner, reported that sales of this kind were taking the place of borrowing A report was called for; all the old officers who were consulted questioned the correctness of the statement, though admitting that the ryot's credit had increased. On this ground interference was deprecated, but in 1881 and 1882 it became known that these sales had largely taken place, and that in many cases the Sonthals were working as labourers on lands on which they had formerly held rights. "All these changes," writes Mr. Oldham, "due to the suddenly enhanced credit, have occurred in the years since 1876, all distinguished not only by good harvests, but by prices most favourable to the producers. In the present season, when credit is wanted, there is none, and in my recent tour through Hendue and Passai, I was followed by crowds clamouring for the restoration of their lands, and complaining that they could get no advances. * * * Were the buyers fellow tenants, or even proprietors intent on merging tenancies, there would be nothing to be said. But they are not. They are all either Bengali traders and money-lenders from Beerbhoom and Burdwan, or the far more dangerous class—Bhagat traders from Bhojpur. * * * It is impossible to describe their greed for land and their daring in pursuit of it." As a proof of the extent to which these sales have been effected, it is stated in tappa Hendue (about 450 square miles) 10 annas of the Sonthal lands have been sold, and in pergunnah Passai (about 300 square miles) 12 annas. How much is mortgaged has apparently not been ascertained. The statement of the Deputy Commissioner that in these transactions the purchasers are always Bengali traders or money-lenders from other districts is not borne out by the returns now before the Lieutenant-Governor from the Registration Department. These returns would seem to shew that, though a considerable number of the sales have been made to mahajans and traders, in the great majority of cases the purchasers are ryots in the Sonthal Pergunnahs. The figures for 1883-84 are 691 sales to money-lenders and

1,932 to ryots. The purchases of holdings by the zemindars themselves are very few. But whatever the facts may be as to the persons who buy the ryot's tenures, Mr. Rivers Thompson is of opinion that it is of the utmost importance to the civil administration of the Sonthal Pergunnahs that the Sonthalis should retain possession of their lands. The growth of a large class of Sonthali labourers working for interlopers on lands once their own must be checked by every legitimate means as being dangerous to the peace of the country and of benefit only to a few individuals who are actuated in their dealings with the people by mere mercenary motives, and who consequently are the greatest obstacles to the prosperity of the country. The question is, however, one of much difficulty.

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The Lieutenant-Governor is therefore not prepared to issue a rule on the subject until the matter has been fully considered in connection with the larger question which has been raised as to the right of transfer of occupancy holdings under the Bengal Tenancy Bill now before the Legislative Council, upon which a final decision will shortly be made.

It is needless to add that small middlemen are worse than useless factors in Indian social economy, and that as a general rule the ryots of large zemindars are much better off than those under small middlemen. The evil would increase a hundred fold if a right of free sale were given to the ryot If the present law were left untouched in this respect matters would adapt themselves to local conditions and circumstances. The custom which has grown up in some of the eastern districts has nothing pernicious in it. There the holdings are large, cultivation is mostly carried on by hired labour, and the transfer of the holding causes therefore no change for the worse in the condition of the tenant. The lesson given by the Deccan ryots should be a warning to the extension of the right of free sale to other places. "The saleable value of the land greatly increased the credit of the ryot, and encouraged beyond measure the national habit of borrowing, which I have before observed on" Secretary to the Government of India, to the Secretary to the Government of Bombay, dated 29th February 1879

Section 31 (*h*).—A provision making right of occupancy heritable like other immovable property is objectionable on many grounds. It would lead to minute divisions and subdivisions of the right to an extent wholly undesirable on all economic grounds It would create great confusion in matters relating to registration of names and place landholders in great difficulty in suits for recovery of rent by reason of the number of persons, who, as heirs under the Hindoo or Mahomedan law, may claim a share in the land. The provision on this point in the Rent Law of the N.-W. P., 1873, is much more reasonable Section 9 provides that "no collateral relative of the deceased, who did not then share in the cultivation of his holding, shall be entitled to inherit under this section"

Sections 32-36.—The right of pre-emption proposed to be given to landholders on the sale of occupancy rights is as inappreciable as it would be ineffectual in palliating the wrong done to them by making the right transferable. The right of pre-emption would go for nothing if the ryot chooses to think—it would be preposterous to assume he would do otherwise—that this holding is protected from enhancement and one therefore which under section 23 is not subject to the landlord's right of pre emption. If the landholder wishes to assert his right of pre-emption, he must go to court prepared to prove the holding liable to enhancement, or that it is a simple occupancy holding, and *that* within six months from the date of sale, gift or bequest Nothing would be, however, more easy than for the ryot to defeat the landholder's right of pre-emption by keeping the transfer a secret from him for a period of six months, after the lapse of which the landlord would have no right or remedy whatever in respect of the transfer. The case would be much worse if the ryots combine against their landlord at the instigation of a neighbouring and unfriendly landholder, and call upon him to exercise his right of pre emption at once in respect to a large number of holdings. Few landholders in Bengal have the means of meeting such a call With rare exceptions therefore they will be placed in such a case at the mercy of their ryots In cases of sales in execution of decrees the Bill does not provide for any service of notice of intended sales upon the landlord, but he is expected to make himself cognizant of all such sales and to bid at the sales—a provision which shews further how worthless is the right of pre-emption proposed to be given to landholders. The Bill makes no provision whatever for cases in which one or two of several joint-owners claim jointly or in rivalry to exercise the right of pre-emption in opposition to the wishes of the rest.

Section 37.—The provision contained in this section involves in the first place an inroad upon the rights of landholders. A ryot will have it in his power to convert himself into a tenure-holder, and thus to evade the provisions as to distraint and the landholder's right of pre-emption The proposals are in the crudest possible state. Great uncertainty will arise by reason of the extent of disability by disease or accident being left as a matter for determination by the court. It is, moreover, indefinite as to whether the converted tenure-holder will lose his right of occupancy as regards the portion of his lands which have not been sub-let, and what rights will accrue to his superior landlord with regard to that portion of the land. Again, the dependence of the provision upon the future enactment of a law, of which the vaguest indication has been given in the Bill, will leave the section a dead letter for an indefinite period of time.

Section 41.—The restrictions placed by this section upon enhancement of rent are most arbitrary. In none of the Bills previously framed was the maximum limit reduced to less than double the existing rent, and in none did the minimum currency of the enhanced

rent exceed ten years; but this section would limit the maximum enhancement to 25 per cent. of the existing rent and extend the minimum currency to fifteen years.

Section 42.—When any land comes to the khas possession of the landholder, it is usually let to some one of his ryots. It is in rare cases that a stranger comes to rent the land, or the landholder has the inclination to let it to one whose antecedents are unknown to him. For all practical purposes therefore the landholder's right to let will be materially restricted even in respect to land which we have been accustomed to regard as land over which he has absolute control He would not be able to rent the land at a higher rent than what was previously paid for it, unless by a registered contract approved by the registering officer, who should see not merely that the contract rent is not more than what the law allows, but also to satisfy himself "that it is fair and equitable, and that the ryot in entering into it acts as a free agent." The climax of the evil is reached in cases in which the landholder lets out land which has come to his possession by virtue of the right of pre-emption. Payment of the highest price available for the land does not give him an iota of right in excess of that restricted right he would have in respect of land which has come to his possession by relinquishment, forfeiture or death.

Section 43.—The changes proposed to be made on the grounds on which a landlord may sue for enhancement of rent will make matters much worse than at present. The introduction of the words "staple food crops" will place additional difficulties in the way of the landholder, and make enhancement of rent dependent on what the Local Government or of the Board of Revenue may choose to call staple crops. Again, in proposing that the landlord shall not be entitled to increased rent on the ground of improvement of the productive powers of the land, except on proof that such improvement was effected by the landlord or by fluvial action, the Bill circumscribes the ground on which landholders have been hitherto considered entitled to claim enhancement of rent. There is no reason why the landholder should be deprived of the benefit of all improvements not effected by the agency or at the expense of the ryots. It is a proposal which strikes as the root of their proprietary title.

Section 44.—The arbitrary limit which this section imposes on enhancement of rent is wholly uncalled for. If a ryoti rent is below the prevailing rate of rent, it should on all equitable grounds be raised to the limit of that rate. It is difficult to understand why under such circumstances the rent should not be enhanced to more than 8 annas in the rupee.

Sections 45 *to* 47—The rules in restriction of enhancement of rent contained in these sections are new and wholly unwarranted. They will simply introduce greater complications than at present in investigations relating to enhancement of rent and make the trial of enhancement suits much more expensive both to the landholder and the ryot. The infringement of the rights of landholders which these sections involve are great, and in this respect the revised Bill does them much greater injustice than any of the previous Bills.

Section 49.—When a landholder gets a decree for enhancement of rent, it is on the ground that he is entitled to it by reason of the increase in the productive powers of the land, or of a rise in the value of produce as determined by an examination of the produce or prices of a number of preceding years. The decree is for what the ryot has been withholding from the zemindar. It is not the case of a poor debtor who is unable to meet the creditor's demand, unless the court allows him to pay the creditor by instalments. The provision for gradual enhancement is therefore unjust and uncalled for. Again, section 169 gives the court a discretion to fix the date from which a decree for enhancement shall take effect The two provisions taken together will give the courts a power to render any decree of enhancement abortive. Progressive rents are necessary only with regard to waste and jungle lands, which cannot be cultivated all at once.

Section 53—Payment of rent in kind is a method of payment which saves the ryot the trouble and expense of taking his produce to the market, and of contesting the zemindar's claim for enhancement of rent, while it saves the latter the trouble and expense of periodically asserting and proving his claim to enhanced rent. It is a self-regulating system which adjusts itself to the variations in the price of produce, and one therefore which is best fitted to give to each of the interested parties his just rights without the interference of laws and courts, and is on that account eminently deserving of the support and fostering care of Government. To use the words of a Government settlement officer "it gives the landlord a fair profit in any improvement he may make; the rents are self-adjusting; the tenant is not driven into debt to meet a fixed demand: if he borrows, he borrows from his landlord—a less exacting creditor than the village banker; a feeling of mutual interdependence and self-interest is created between landlord and tenant; the former is more than a mere rent-collector—his own prosperity depends on that of the cultivator."

The ultimate loss to the zemindars, if such commutation were allowed, would be in other respects very heavy. After the rent has been commuted into money-rent, the ryot need only relinquish the holding, and he or his neighbours would be able to compel the landholder to relet the land at what the court will consider to be a fair and equitable rent. Payments in kind also secure to poor landholders their requisite supply of food-grain for consumption throughout the year, and it would be a source of great inconvenience and hardship to them if the ryot be allowed to change them into money-rent at his pleasure. It should, moreover, be recollected that it is in respect of lands, which are more than ordinarily subject to the risks of cultivation, and which the ryots do not venture to take at a fixed annual money-rent, that rent is paid in kind. Our legislators should think twice before they recommend a change which may

ultimately injure those most for whose benefit they now wish it. It should also be borne in mind that in the two districts of Behar where bhowly rent obtains to a large extent, the cultivation of land is carried on on the co-operative system. Both in Patna and Gya the cultivation of land mainly depends on the landholder. It is with his money that embankments must be raised and maintained, and it is with his money that *pynes* or water-courses must be cut and kept clear, before the land can be cultivated. The ryots are altogether powerless to execute and maintain these works, and any measure which would throw the entire responsibility of cultivation on them would be their ruin.

Sections 55-61.—In the face of the great anxiety expressed by the Secretary of State that the principle which allows no right of occupancy to accrue except by possession for twelve years should not be abandoned, and his emphatic declaration that he attached great importance to it, this chapter proposes to give ryots who have admittedly no right of occupancy as good a right of as that created by Act X of 1859, if not one much more damaging to the landholder The rent of such a ryot cannot be raised at the will and pleasure of the landholder; he cannot be ejected, except for breach of a condition of a written contract; his rent cannot be enhanced without a notice having been previously served upon him and a decree having been obtained against him; and the measure of enhancement must be determined by court. These are rights much greater than what an occupancy ryot enjoys at present. The whole of this chapter trenches most injuriously on the rights of landholders.

Sections 62 *to* 63.—These rules relating to under-ryots are altogether new. It is not difficult to foresee that the operation of these rules will bring on great confusion regarding the rights of under-ryots of different grades.

Section 64 (2).—This rule of presumption has placed the zemindars at a great disadvantage, and they have complained of it most bitterly. Sir Richard Garth truly observes that "this section has undoubtedly operated very unjustly against the landholders;" and further on: "But in the case of rent it might well be that for 20 years no ground on enhancing it had ever occurred; or from the fact of the landlord being a minor, or female, or over lenient with his tenants, any opportunity for enhancement might not have been taken advantage of, and in such cases it would be hard to presume against the landlord that because the rent had not been enhanced for 20 years, it has been fixed from the time of the Permanent Settlement." The experience of the last 24 years has shewn that in 95 per cent. of suits for enhancement of rent, landlords were unable to rebut the presumption thus raised, and how could they? Those who have come into possession of estates and taluks by purchases at sales for arrears of revenue, or rent, or in execution of decrees, did not get a scrap of paper belonging to the former proprietors, while those who purchased at private sales were in no better plight, considering the great difficulty of preserving from white-ants and other causes of destruction, massive collection papers of a period more than 30 or 40 years old. It is impossible therefore for landholders to adduce evidence, except in rare cases, to rebut the presumption, and it was this consideration which induced Mr. Reynolds to suggest an amendment to the effect that no such presumption should be raised unless the ryot succeeded in proving uniform payment from 1839, *i.e.* 20 years before the date of the passing of Act X of 1859, which for the first time enacted the rule. The observations made by Mr. Reynolds in support of the change are unexceptionable. "Allowing all due weight to the arguments of the Commission, it is to be remembered," he said, "that the presumption was first introduced by Act X of 1859, and that it was then necessary for the tenant to prove a uniform rate from 1839. It is now only necessary to prove such uniform payment from 1861. As there is reason to think that rent receipts have been much more regularly given and much more carefully preserved during the last 20 years than during the 20 years which preceded them it seems to follow that the lapse of time has made it more and more easy to raise the presumption, and more and more difficult to rebut it. Nor can it be denied that auction purchasers labour under a special grievance in this matter. If it be said that they may be expected to regulate their bids accordingly, it may be replied that it is not for the public interest that estates should sell below their value on the ground that the circumstances of the sale facilitate the advancement of fraudulent claims by the tenant." It behoves the Legislature to enquire how very easy it is for ryots with the aid and connivance of former talukdars and their gomastas to produce rent receipts shewing uniform payment for 20 years. The injustice of the rule of presumption is clear from the fact that Government with all its prestige and resources wish to keep clear of it in respect of temporarily settled estates. The exception which section 20 of the Bill makes with reference to such estates proves beyond all manner of doubt the necessity of a change of the law for the behoof of the landholders. The remarks made by Mr Reynolds on this head are conclusive. He says: "The exception in the case of tenures in an estate not permanently settled is stigmatized by Baboo Joykissen Mookerjee as an invidious distinction which shews the justice perpetrated on the holders of permanently settled estates. A little consideration will shew that the exception is perfectly reasonable."

Section 64 (3).—The money value of rent in kind varies in different years with the price of agricultural produce. Payments in kind cannot therefore be reckoned as uniform payments of rent. The effect of this section would therefore be to extend the rule of presumption to cases where there has admittedly been no uniform payment of rent. This would be most objectionable. It would in that case be in the power of every ryot to prevent enhancement of rent on the ground of a rise in the value of produce which payments in kind secure to the landholder.

Section 67.—Such a variety of objections have lately been taken in the trial of rent suits as to the instalments by which rent is payable, and so many capricious decisions have been passed on the subject, that some simple rule on the subject has become very desirable; instead of that, however, the Bill would make matters worse. In the case of tenure-holders the Bill would give free scope in the first instance to the terms of any agreement between the parties, then to custom, and lastly to such rules as may be framed on the subject by the Government. In the case of a large majority of the ryots, viz., the occupancy ryots, the Bill provides that the number of instalments should on no account exceed four. It is a fact borne out by the Regulations that Government revenue was formerly collected in monthly instalments subject to a penalty of 25 per cent. for default. By the custom of the country the rents of ryots are even now collected by monthly instalments, and all the leases evidencing creation of tenures, putni and other, contain stipulations for monthly payments. A reduction of the number of kists would therefore be unjust to the zemindars and tenure-holders. Mr. Reynolds' Bill effected a compromise in the matter which was acceptable to all. He proposed in his Bill to fix only four instalments, the date of each of which was timed just one month before the dates on which the four instalments of Government revenue are payable. A definite rule like this would be much simpler and more conducive to peace and harmony than a procedure which is sure to cause useless trouble and expense to suitors.

Section 68.—The proviso to this section is new, and it proposes a mode of payment of rent which is wholly unjustifiable. A postal money-order does not state anything beyond the amount and the names of the sender and payee. How is the landlord to ascertain for what year the rent is paid, whether it includes the cesses and interest, and for which holding the rent is paid, supposing the sender to have more than one holding in his possession?

Section 69.—This section ignores a long established practice. It offers a direct incentive to arrears accumulating, so that after the lapse of the statutory period of three years the ryot may wash himself clean of all liability to arrears. On the other hand it compels the landholder to resort to the civil court for every default, without shewing any consideration to his tenant. In fact it is a premium on hardheartedness and discount on mercy. A zemindar should unquestionably have the right of crediting payments of rent to the account of arrears, if there be any, and the ryot should have no right to demand that it should be credited to a particular year and instalment if the rent of previous years be in arrears. The rule in question being opposed to the established practice should be omitted.

Section 70.—In providing for receipts for rent by the landlord, the Bill evidently means receipts by his authorised agents. It would be well, however, if the meaning be made clear. The amount of rent and the amount of arrears would be shown in the annual account. Why then require them to be repeated every time the rent would be paid? It should be also borne in mind that in the case of *utbandi* and some other tenures the annual rent payable on account of a land is not determined till at the close of the year when the land is measured and the crop on it valued. If the introduction of any change be at all desirable, the Legislature should see whether the *hatchita* system may not be introduced for the purpose of evidencing payments of rents. It has several considerations to recommend it. But whatever the form of the receipt that might be adopted, it is necessary in the interests of both the parties that the counterfoil of each receipt should be signed by the ryot.

Sections 73-76.—A ryot is at present allowed to deposit rent in court on his verified statement to the effect that the landholder's agent has refused to receive the amount tendered to him, and that the amount is all that is due by the ryot up to the date of deposit. Nothing can be more reasonable than this provision. The Bill, however, proposes changes in the matter of deposit of rent which are unjust to the landholders and quite uncalled for by the circumstances of the case. It proposes to allow deposits of rent to be made if the ryot has reason to believe (without an actual tender) that his rent would not be accepted; or if he is unable to obtain a joint receipt from all the co-shares of a property, or if he entertains a *bonâ fide* doubt as to who is entitled to receive the rent. The Bill would therefore make the ryot the judge of his landlord's title and of his inmost intentions. It would give the ryot the power to convert the office of the Collector or such other officer as may be appointed in this behalf into his landlord's kutchery, and to compel his landlord to bring an expensive suit to establish his title against any person of the street who the ryot may choose to think has a rival title in the property. The proposition is so opposed to all recognised principles of law, and so dangerous in its effects, that in providing for interpleader suits by stake-holders the Code of Civil Procedure has expressly excluded (section 474) tenants from the category of persons who, as stake-holders, may compel rival claimants to interplead in a suit in court. The immediate effect of this would be to empower the officer to assume the functions of a civil court and adjudicate in an informal but quite effective manner regarding rights to ones property on the issue of a few rupees, and put the actual possessor out of possession on the alleged right of third parties. The Bill, moreover, would give a ryot much greater rights than what the Procedure Code gives to any other stake-holder. It would save the ryot from the expenses of a suit, but allow him to compel his landlord to plunge into an expensive and in most cases fruitless litigation. Provisions like these are calculated simply to breed ill-feeling, create animosity, harass both the interested parties, and give rise to endless litigation.

The provision for the service of notice on landholders is anything but satisfactory. In most cases no personal notice would be served, and the landholder, however poor he may be, and the great bulk of them are poor, is expected to have an agent always present at all the revenue offices of the district to inform himself of the fact of deposit by any ryot

from the notification required to be affixed at the revenue office. The provision for payment of the amount deposited is equally objectionable. The revenue officer may pay the amount to any person he thinks entitled to get it, and then the party aggrieved may recover the amount by a regular suit. In matters like these in which the rights of parties are not involved, and in which legislation may go a great way to foster good feeling between the parties, a provision which will unnecessarily set class against class is wholly unwarrantable. The present law relating to deposit of rent is about as good as a law can be. If a time be fixed within which notice of deposit should be served on the landholder, and if a provision be made for the transmission of the money by a postal money-order to the landholder, all the improvement that it needs will have been made. The party depositing should be made responsible for due service of notice to the party or parties who are believed to be entitled to the money

Section 79 —The introduction of evidence of usage for determining rates of interest on arrears of rent would prove simply harassing to the parties, and the proposal that interest shall not run until after the expiration of a year is anything but just. The present law on the subject is equitable, and should be retaind.

Section 85.—Both Sir G. Campbell and Major Baring classed some so-called impositions under the head of abwabs or illegal cesses which are no abwabs at all. The salamies for instance which a landholder gets from a ryot for making excavations and taking earth for making bricks, for hewing trees, for excavating fish-ponds, &c., are not impositions in any sense of the term, but consideration money for special privileges which he is entitled to exact on every equitable ground. These acts of the ryot deteriorate the letting value of the land, and are therefore such as landlords are lawfully entitled to receive compensation for. Such salami or compensation landholders have in several cases recovered by suits in court. Indeed, the words *abwab* and *mathut* used in the section would not have covered them at all but from the fact of some such payments being made annually or at recurring periods, or so long as the special advantages are enjoyed, and because the concluding part of the section declares all additions to the actual rent to be illegal, and the next section imposes a heavy penalty. It cannot and should not be the intention of Government to prohibit special charges for special benefits; and it is necessary therefore that the term abwab should be clearly defined and exceptions should be expressly made with regard to such compensatory charges. In several places the imposition of abwabs has taken the place and superseded the necessity of enhancement of rent. It is in fact a moral adjustment of rent in consequence of the increased value of produce, and is in that light not so objectionable as it is supposed to be. In many cases it is only a rate added to rent at so much per rupee, and distinguished from the previous rent by a special designation. It is unquestionable that ryots agree to pay these cesses much more readily than enhanced rent. The cry against them arose at a time when it was necessary for fiscal purposes to ascertain the actual collections of the landholders, and is simply meaningless at the present moment. Nay, the prejudice against these moderate increments to rent prevent their being consolidated into *neat* sums which would be so much the more convenient to discuss about in courts of justice. The only other remark which need be made with reference to this subject is that our legislators are evidently ignorant of the fact that what is called the mathut is a village fund raised by ryots for their own behoof, and not a fund raised by the landholder for his own benefit. The fund is made up of small contributions from all the ryots of a village, and is spent under the direction of the Punchayet or Committee of Mundles of the village in Churruck or other poojahs, in paying annual perquisites to the police, in village festivities, &c.

Sections 87-94.—The power which these sections give to ryots not having a right of occupancy of building houses and out-offices on the land without the permission of their landlords, of compelling their landlords to make improvements, and of making the improvements themselves on default of their landlords, is inconsistent with the very notion of a tenancy. The provisions for the award of compensation for improvements made by ryots are altogether foreign to this country. Improvements are rarely made by ryots. Nothing is more true than what fell from His Excellency the Viceroy on this subject in the course of the debate on the Central Provinces Tenancy Bill. All these provisions should therefore be omitted. These sections provide for the award of compensation to ryots for improvements made by them. In most cases the amount of outlay would be more than repaid by the advantages which the ryots would enjoy by reason of such improvements, and it would in such cases be unreasonable to give them any compensation for exhausted improvements. The limitation prescribed in this respect by the Rent Commission was an equitable one. They suggested that no compensation should be awarded after a certain number of years from the making of the improvement.

Section 96.—This section provides that a ryot must cease to hold land for the full period of one year before his title to the land expires. In the meantime the land will remain fallow, and the landholder will have no security whatever for his rent. Very often pyecast ryots who wish to relinquish their holdings simply absent themselves during the cultivating season, and such absence is reckoned as an act of relinquishment without a regular petition to that effect. It would not be at all unreasonable if it were held that a ryot's title would cease by his absenting himself from the village up to the end of the cultivating season without making any provision for the payment of the rent payable by him. By the Central Provinces Act an absence of 30 days operates to exinguish the ryot's title.

Section 100.—This section provides for cases in which a ryot occupying a land refuses to attend the measurement and point out the boundaries, but the Bill takes no notice whatever of the important class of cases provided for by the present law, in which the landholder,

usually a new purchaser, is unable to ascertain the names of the ryots or persons who are in possession of particular holdings in his estate. In such cases a landholder is placed in a situation which entitles him to as much help from a public officer as in any other. It is a situation which purchasers of estates and tenures at auction sales are frequently placed in. The Bill should provide for such cases as well as impose penalties for determined attempts on the part of the ryots to thwart the Collector's attempt at a measurement of the land, as provided for by section 10 of Act VI of 1862 B.C.

Sections 102-109.—A provision which gives the owner of a minute fractional share in a property or a single ryot the right of applying to the District Judge for taking it out of the hands of the proprietors thereof and placing it in charge of a joint-manager would be productive of very great mischief. Such an interference with the rights of private property can be justified only on the ground of public good, which certainly does not mean that if certain tenants of a locality who happen to be opposed to their landlord in questions of private property, and it is only in exceptional cases, as when mismanagement of the zemindar interfered with the well-being of third parties, that is, parties other than landlord or tenant, that a District Judge should be empowered to appoint such a manager, but a provision empowering him to do it whenever a dozen ryots choose to allege that such a course would lead to public convenience, or the owner of $\frac{1}{16}$th share represents that it would conduce to his benefit, would be a most unwarrantable and officious piece of legislative interference with private property. The most objectionable feature of the law is the power it virtually gives to the Judge to adjudicate questions concerning possession in an indirect manner and without due precaution. The proviso attached to the section is intended to serve as a safeguard, but as in all disputes of the kind the real contention will be about possession, either the law must fail, or the Judge must take up the question of possession in a indirect manner. Much of the objectionable character of this provision would be removed if it were provided that no joint-manager should be appointed, unless the owners of more than half the share of the property apply for the same. While upon this subject it may be mentioned that interference of this kind on the part of Government has not been wholesome in the N.-W. Provinces. There the Government makes the co-parceners to elect a hereditary lumbardar, and it is now found that the heirs of this common manager having become numerous, the old state of disorder has revived. In Bengal the separation of shares and partition of estates which prevail will on consideration be found to be the natural and best solution of the difficulty.

Section 110.—For obvious reasons no record of rights should be undertaken in any tract of country on the application of landholders and ryots. The first ground laid down in sub-section 2 (*a*) of this section should therefore be omitted. If it were allowed to stand, it would be in the power of the ryots of any village to ruin their landlord by compelling him to meet all at once their claims to fixity of tenures and fixity of rents and such other rights as they might choose to claim.

Sections 123-134 —The first attempt made since 1793 to regulate enhancement of rent by the enactment of definite rules has failed, and it requires no great foresight to see that the elaborate rules laid down in the Bill for the preparation of tables of rates would make matters much worse. It is anything but reasonable to expect public officers wholly ignorant of the conditions of the people, of the nature of the soil, of the different kinds of crops, and of the agricultural capabilities of a village would ever succeed in fixing proper rates of rent for different classes of land. They must err on one side or the other Did not our judicial officers make confusion worse confounded by decreeing (before they ceased to decree any rates at all) a variety of rates for the same class of land in a village? The most feasible way of meeting the difficulty appears to be the legal recognition of the indigenous system of the country. Let the preparation of a table of rates for each village be entrusted to a punchayet consisting of a number of mandals on one side and the zemindar's gomashta of the village on the other, and some provision made for cases of difference of opinion. A table or jamabundee so prepared would be more satisfactory to the parties concerned than any table prepared by a public officer, and all the trouble, expense, and loss of time to the detriment of cultivation which it involves would be avoided.

A provision for the payment by zemindars and ryots of the costs of preparation of a table of rates, including the salaries and portions of salaries of officers employed in the work, is under the circumstances unjust and unwarrantable. A suitor paying high institution and other fees is entitled to have his suit tried and decided, otherwise the salaries of Judges and Moonsiffs may with equal justice be made payable by him in addition to what he pays by way of institution and process fees. The payment of the cost of preparation of tables of rates would not relieve suitors of the costs of suit. After they have paid for the preparation of tables of rates, they would have to pay the costs of suit all the same. Again, after a table of rates has been prepared at an enormous cost, what use will it come to? In the adjudication of suits for enhancement of rent the court is required by section 134 not to rely solely on the table, but to adjudge the rate of enhancement on a variety of considerations. The condition of the land, the changes made in it, the persons by whom the changes were made, and the proportion of cost incurred by each contending party in making the change would have to be enquired into, and latitude should also be given to custom and contract to vary the rates mentioned in the table. The great difficulty which officers would experience in preparing correct tables of rates, the enormous expenditure which the work would entail, the double costs which the procedure would throw on landholders and ryots, and the little practical

use the table will come to in suits for enhancement of rent are all considerations against the feasibility of this illjudged measure.

Sections 139-158.—Distraint of crops for the realisation of rents is an indigenous institution of the remotest antiquity. It enables the landholder to collect his rents by the agency of his permanent establishment, without adding in the least to his own expenses, or saddling any cost on the ryot. It prevents the ryots on the other hand from cheating their landlords of their just rents, and in so far acts as a check to fraud and improvidence. If in some cases the power has been abused, the fact is so easy to prove, and the penalties for offences committed in connection with it are so heavy that the law might be left safely to vindicate itself. In Bengal at least, cases of abuse of the power of distraint have been very exceptional. It was the majority of the members of the Rent Commission who, labouring under an error, assumed the institution to be an offset of the English law, and suggested a radical modification of it on purely theoretical grounds. The framers of the present Bill have improved upon the alterations in the law suggested by the Rent Commission, and drafted, under the head of distraint, a number of provisions which not only bear no resemblance to the institution of distraint, and amounts practically to a total abolition of the law of distraint, but actually deprives the landholder of even some of the rights which an ordinary creditor enjoys under the law of the land. Distraint has always been understood to be an act of a landlord as distinguished from attachment, which must be act of a constituted authority. But the Bill provides that if a landholder wishes the crops of a ryot to be distrained for recovery of his rent, he must make an application to court for the purpose; that such an application must contain all the particulars required for plaints, if not more; that it should be signed and verified like a plaint; that the amount of arrears should be proved as in suit for arrears of rent; that the court may then either admit or reject the application; and that, if admitted, an officer of the court would be deputed to distrain the crops Where, in the first place, is the necessity of laying down all these elaborate provisions when it is open to the landholder to have, like any other plaintiff, the crops of a defaulting ryot attached before judgment under section 483 of the Code of Civil Procedure immediately after bringing a suit for recovery of rent? What facility would the Tenancy Act give the landholder over the ordinary procedure of civil courts when he would have to pay the court fee, adduce evidence, and pay the expenses of attachment all the same? What inducement would there be to the landlord to apply for such an attachment in regard to a poor ryot paying a small rent when the cost of suits and attachment are likely to eat up the whole value of the crops? What would the officer of court attach after all costs have been incurred if the ryot has removed or sold the crops in the meantime, and of what benfit would these provisions be to any ryot who would be thus unnecessarily saddled with a large amount of costs? Consistently with the other provisions under this head the Bill provides for heavy penalties and punishments for certain acts in connection with attachment of crops. But why should any penalties be at all imposed beyond what the ordinary law provides for attachments made by order of the court, by an officer of the court, and after proof to the satisfaction of the court of the justice of the claim?

The primary object of an amendment of the rent law, according to the repeated promise of the Bengal Government, was to provide facilities to landholders for the realisation of rent, and the section under notice deprives them of one important facility they now possess, without supplying them with any substitute whatever.

Section 168.—As regards rent suits, it is a great mistake to suppose that suits for small amounts are of no moment. They form the largest number of suits in the courts, and they are often suits of great importance. In suits in which the amount of rent annually payable by a ryot is in dispute, the High Court has held that no appeal lies at that court, inasmuch as no question of title is involved, though the point adjudicated effects matters which in reality give rise to a constantly recurring cause of action. In such cases an appeal should be allowed in the interests of both parties, and the proposal to make the decision of the first court final in suits of the kind for sums not exceeding Rs. 50 should be abandoned.

Section 169 —This section gives the court a discretion to fix the date from which a decree for enhancement of rent should take effect. The Bill provides for so many and so diverse limitations in the way of enhancement of rent that it would be a matter of great difficulty to a landholder to get enhanced rent. Why unnecessarily increase the difficulty by giving the court an arbitrary discretion which will place an additional obstacle in his way? Were it the policy of Government to prohibit enhancement, the various provisions in question would practically carry it into effect without such policy being openly declared; but as we believe such is not the case, we consider the difficulties thrown in the way of enhancement are, as they would practically make it not worth the while to seek it by reason of the trouble, annoyance, and heavy cost, unsound on economic grounds and unfair towards the landholders, who have the right of protection in common with all other classes of the community

Section 176 —This section is very objectionable. It is an encroachment on the rights of auction purchasers at sales for arrears of rent which they have all along enjoyed. The effect of item (*e*) would be to deprive the purchaser of the right of avoiding a mookururee or other permanent lease created by the defaulting tenant Such a provision is opposed to the fundamental principles which regulate sales for arrears of rent, viz. that they restore the tenure to the condition in which it was at the time of creation, and give it to the purchasers free of all encumbrances created by the out-going tenant. Section 66, Act VIII of 1869, provides for the sale of tenures free of all such encumbrances. The proposition is also one which

would give rise to fraud and litigation, inasmuch as every defaulting tenant will try to make the best of their incumbancy by creating mookururee leases in favour of relatives and dependants.

Section 180.—The provision for the sale of tenures for arrears of rent subject to registered incumbrances in the first place and then if necessary free of such incumbrances would simply increase the costs of litigation which will ultimately fall on the ryot, deter intending purchasers from bidding at sales, lead to inadequate prices being offered for the tenures, and thus cause material injury at every step both to the landholders and the ryot. The sale should always be, as at present, free from all incumbrances.

Section 210.—The provision against freedom of contract in respect to the accrual and to the incidents of the right of occupancy is indefensible on all grounds rational and economical. The ryot is a free agent in all other concerns of life. He may sublet his lands at any rent, however small, he may borrow money at a ruinous rate of interest, he may relinquish, mortgage, or sell whenever he pleases, and convert himself into a day-labourer, but he must not consent to forget the acquisition of right of occupancy even in regard to land which he requires for temporary purposes, or to pay enhanced rent to his landlord at a rate which he has not the least disinclination to pay. The ryots are unquestionably a much more intelligent class of men than day-labourers, but although the latter are free to contract away their liberties for service in an unknown land for years, the freedom of the former must be restricted in the opinion of our legislators, in matters in which they are the best judges of their own interests The result of such a restriction would be that landholders would not come to terms with ryots who will fail to compensate by payment of *salamy*, or otherwise his loss in rent, and let out the land to those who would be able to do so. The poorer portion of the ryots would thus be turned into labourers. It is freedom of contract alone which can rescue them from serfdom. The argument drawn from section 58 of Regulation VIII of 1593 in support of the proposed restriction is at best fallacious. That section required the form only of the potta to be submitted for approval once for all, and let the adjustment of the conditions, terms and details to the parties concerned. Section 56 of that Regulation clearly shews that no sort of restriction whatever was intended to be placed in the way of the contracting parties.

The objections to the restrictions to freedom of contract apply with double force to contract relating to rent which the contracting parties with an eye to their own interests will enter into. Whenever a ryot agrees to pay a certain amount of rent for a plot or plots of land he does so after taking into consideration the situation and capabilities of the land and the profits it or they well fetch him. He is the best judge of his own interests in the matter; he has his remedy in all cases in which the least coercion has been used, and yet this section restricts his rights as a free agent and makes the registering officer the guardian of his interests. But will any amount of legislative precaution prevent the parties from entering into any contract for rent they might agree upon? The futility of such attempts was made abundantly clear by the experience of the usuary laws. The result of such a law would be that honest zemindars would suffer, while those whose exorbitant demands for rent it is intended to limit would be able to carry every thing in their own way.

Sections 194-208, 13, 14, *schedule*.—The attempt to incorporate in the proposed Act the law relating to putni tenures should be abandoned. Those sections should therefore be omitted. The present law on the subject is a masterpiece of legislative wisdom. It has stood the test of experience for more than 60 years, and has always been found to be a complete and satisfactory law on the subject.

Section 228 — The proposal to exempt khas mehals and wards' estates from the operation of the proposed law is anything but reasonable. It is but only fair that the rights of all tenure-holders and ryots should be regulated by one code of laws. Nothing would create a greater confidence in the minds of the people in the justness of an Act defining the rights and obligations of landlords and tenants than the fact that it applies equally to Government as landlord and to private landlords. There is no difference in the position and character of the subordinate agency employed by Government and by private landlords in the collection of rent and management of estates, and yet the State has secured to itself a special and summary procedure for the recovery of rent. In the matter of rights and obligations relating to land, however, the people have a right to expect that there should not be one law for private landlords and another for the strongest and most irresponsible of landholders—the State.

J. E. S.—Reg. No 6784C—327—15-9-84.

No. 73, dated Mozufferpore, the 4th September 1884.

From—The Vice-President, Tirhoot Landholders' Association, Mozufferpore,

To—The Secretary to the Government of Bengal, Revenue Department.

I HAVE the honour to send in a separate cover by book-post a copy of the printed notes prepared by this Association on the Bengal Tenancy Bill as amended by the Select Committee for your perusal.

NOTES ON THE BENGAL TENANCY BILL AS AMENDED BY THE SELECT COMMITTEE.

THE Bengal Tenancy Bill, as amended by the Select Committee, is not the production which every one expected—and very reasonably and rightly expected—after the several important questions involved in the proposed measure had been so ably discussed and argued threadbare by men best informed on the subject, and quite fitted to judge of the wants and requirements of the country and its people. This amended Bill has not a little surprised and disappointed all right thinking men, who consider and treat the matter in the most impartial manner, and do not deal with it, as a firm, staunch, and unflinching advocate or partizan But much of this surprise and disappointment ought to vanish if we, for a moment, reflect upon the peculiar manner in which the Select Committee was constituted, for most of the members, composing the Committee, were men, who went to the Council Chamber to deliberate upon and discuss the many important questions with firmly-rooted convictions, decidedly in favour of one class and against the other. We have very carefully gone through and considered the Bill, and we find that a considerable portion of it is condemnable from the zemindars' as well as the ryots' point of view. At every step we meet with restrictions and restraints upon the existing rights and privileges of the landlords, imposed without any justification whatever, encroachments upon their proprietary rights made without any reason or rhyme, and measures proposed which will surely plunge both landlords and tenants into a flood of litigation, expense, worry, and trouble. The consequences of such a state of things can very easily be imagined; and we do not think we are wrong when we say that some of the results will be, among others, as follow:—

It will prove a heavy drawback to the prosperity of the people affected by the Bill, which is just the reverse of the object the Government has in introducing the measure; it will revolutionize the existing relations between landlord and tenant, and introduce innovations quite unsuited to the ideas of the people, especially the agricultural population of Bengal; it will wholly destroy the amity and good feelings now subsisting between the parties, making the one a determined enemy of the other; will open a wide door to forgery and perjury and subornation of perjury; most injuriously affect customary laws and rights; and, what is worst of all, fetter freedom of contract which has hitherto regulated all dealings, not only here in India, but in all parts of the civilized world, not merely between landlords and tenants, but all classes of people.

We all know that the object in agitating the question originally was to find the means and way for supplying certain wants of the zemindars. But how strange! Since the first agitation of the question, every Bill, one after the other, which has come out of the Legislative anvil, has been peculiarly remarkable in its confiscatory character. Far from simplifying the procedure for the realization of rent and enhancement of the same, and far from compensating the zemindars for the loss, trouble, and inconvenience they have to bear in consequence of the obligation imposed upon them to realize certain cesses for the Government, the Bill has gone far to render the position of the zemindars very much worse; for it places most needless restrictions upon the exercise of their power of distraint, and certainly the provisions of the Bill in connection with enhancement are cumbrous, difficult, and inconvenient.

There can be no denying that, in making the provisions embodied in the Bill, Government is actuated by the best of motives; for it has at its heart the promotion of the happiness and comfort of the tenants and the general amelioration of their condition; but at the same time there can be no denying that in carrying out its object, how good and laudable-soever it may be, it must trench upon the vested rights and privileges of the landlords, and curtail many a valuable and fondly cherished right which has been indisputably enjoyed by them ever since the commencement of the British rule, and long before such rule commenced. Why we may very safely observe that this Bill is wholly founded upon the assumption that the property in the soil does not belong to any person, and that therefore it is quite in the power of the Legislature to make any law it thinks fit regulating the proprietary right in land, and making any distribution of the same it thinks fair and equitable in its wise, mature, and calm deliberations. One need hardly be told that a Bill, which is built and constructed upon so grossly false a basis, must be rotten in its very core, and seriously mischievous in its results as far as landlords or zemindars are concerned. The assumption we have spoken of above is a very barefaced one, put forward as it is with full knowledge of its falsity; for we cannot by any means persuade ourselves to believe that those who put it forward are ignorant, that there is ample evidence within our reach to establish that the property in the soil belongs to nobody else but the zemindars and independent talookdars. We need not go far to collect evidence in support of the position we

take, for we have ample proof of this in the Regulations and Acts themselves passed by the Legislature from time to time. It appears to us to be too late in the day to agitate and discuss the question now, when from the very valuable and useful work of Dr. Field, we find that this very question and other cognate matters were very seriously and carefully considered and discussed by such great men as Warren Hastings, Francis, Pitt, Fox, Burke, Dundas, Lord Teignmouth, and Lord Cornwallis, before the Permanent Settlement was effected. As the result of such consideration and discussion, we have what we meet with, first of all, in the most important Regulation, that is, Regulation I of 1793, and other subsequent Regulations and Acts passed by the Legislative Council at different times. The very first paragraph of Regulation I, 1793, runs thus :—

"The following articles of the proclamation, relative to the limitation of the public demand upon the lands, addressed by the Governor-General in Council to the *zemindars, independent talookdars, and other actual proprietors of land*, paying revenue to Government, in the provinces of Bengal, Behar, and Orissa, are hereby enacted into a Regulation, which is to have force and effect from the 22nd March 1793, the date of proclamation."

Then the second section is as follows :—

"In the original Regulations for the Decennial Settlement of the public revenues of Bengal, Behar and Orissa, passed for those provinces respectively on the 18th September 1789, the 25th November 1789, and 10th February 1790, it was notified to the *proprietors of land*, with or on behalf of whom a settlement might be concluded, that the jumma assessed upon their lands under those Regulations would be continued after the expiration of the ten years, and remain unalterable for ever, provided such continuance should meet with the approbation of the Honourable Court of Directors for the affairs of the East India Company, and not otherwise."

Sections six and seven run thus : –

"*Section* 6 —In the event of the proprietary right in lands that are, or may become, the property of Government, being transferred to individuals, such individuals, and their heirs and lawful successors, shall be permitted to hold the lands at the assessment at which they may be transferred for ever."

"*Section* 7 —It is well known to the *zemindars, independent talookdars and other actual proprietors of lands*, as well as to the inhabitants of Bengal, Behar, and Orissa in general, that from the earliest times until the present period, the public assessment upon the lands has never been fixed, but that, according to established usage and custom, the rulers of these provinces have from time to time demanded an increase of assessment from the *proprietors* of land; and that, for the purpose of obtaining this increase, not only frequent investigations have been made to ascertain the actual produce of their estates, but that it has been the practice to deprive them of the management of their lands, and either to let them in farm, or to appoint officers on the part of Government to collect the assessment immediately from the ryots. The Honourable Court of Directors, considering these usages and measures to be detrimental to the prosperity of the country, have, *with a view* to promote the future ease and happiness of the people, authorized the foregoing declarations; and the *zemindars, independent talookdars and other actual proprietors of land*, with or on behalf of whom a settlement has been or may be concluded, are to consider these orders fixing the amount of the assessment as irrevocable, and not liable to alteration by any persons whom the Court of Directors may hereafter appoint to the administration of their affairs in this country.

"The Governor-General in Council trusts that the *proprietors* of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves in the cultivation of their lands, *under the certainty that they will enjoy exclusively the fruits of their own good management and industry*, and that no demand will ever be made upon them, or their heirs or successors, by the present or any future Government, for an augmentation of the public assessment in consequence of the improvement of their respective estates.

"To discharge the revenues at the stipulated periods without delay, or evasion, and to conduct themselves with good faith and moderation towards their dependent talookdars and ryots, are duties at all times indispensably required from the *proprietors of land*, and a strict observance of those duties is now more than ever incumbent upon them in return for the benefits which they will themselves derive from the orders now issued. The Governor-General in Council therefore expects that the *proprietors of land* will not only act in this manner themselves towards their dependent talookdars and ryots, but also enjoin the strictest adherence to the same principles, in the persons whom they may appoint to collect the rents from them. He further expects that, without deviating from this line of conduct, they will regularly discharge the revenue in all seasons; and he accordingly notifies to them that, in future, no claims or applications for suspensions or remissions on account of drought, inundation, or other calamity of season, will be attended to; but that, in the event of any *zemindar, independent talookdar, or other actual proprietor of land*, with or on behalf of whom a settlement has been or may be concluded, or his or her heirs or successors, failing in the punctual discharge of the public revenue which has been or may be assessed upon their lands under the above-mentioned Regulations, a sale of the whole of the lands of the defaulter, or such portions of them as may be sufficient to make good the arrear, will positively and invariably take place."

If we multiplied instances, it would be necessary to produce here the whole of the Regulation, section by section; but we need not do so, as the sections we have given above

afford, in our opinion, the clearest evidence that the proprietary right in the land belongs exclusively to zemindars and independent talookdars. For the purpose of indicating how the sections do so, we have underlined in them certain words. The words underlined can leave no doubt in any mind, how sceptical soever it may be, that the actual proprietors of the soil are the zemindars and independent talookdars, not because the Permanent Settlement Regulation made them so, but because they were found to have occupied that position during the Mahomedan rule. All that the British Government did, when it proceeded to make the Permanent Settlement, was simply to confirm the proprietary rights in land of those who have been enjoying them when the country was in the hands of the Mahomedans. It did not confiscate those rights, and we think it did right in not confiscating, having regard to the way and manner in which it obtained possession of the country, for that way and manner was anything, but certainly not conquest.

But for the sake of argument we may concede, as we lose nothing by the concession, that it could confiscate those rights in the exercise of its power as conqueror, and did actually do so there cannot be the slightest doubt; that in the exercise of its sovereign prerogative, it has restored them again to those whom they belonged to, their heirs, successors and representatives for ever, satisfying itself with a fixed revenue.

Among the sections we have quoted above, there is section 6, in quoting which our object is to show that by Regulation I, 1793, the British Government meant to convey and confer, and did convey and confer, what proprietary rights it had in the lands.

Here we may very properly notice the argument which is to the effect that the Permanent Settlement Regulation is simply a contract, to which there were only two parties, namely, the Government on the one side and the zemindars on the other, and that therefore the ryots, who were no party to it, cannot be bound by it—a more frivolous and puerile view of the matter cannot be easily conceived. This Regulation, in our opinion, is a Royal Charter whereby the Sovereign Power, in the exercise of its right by conquest, either confirmed in, or conveyed to and conferred upon, certain persons, proprietary right in land for a valuable consideration. Certainly the argument cannot come with a good grace from a Government official, for it really amounts to this: Government knowingly and deliberately entered into a solemn contract with a certain class of persons for its own benefit, and that of the class it dealt with, to the detriment and injury of the whole body of ryots.

Again, supposing that it is true that the Regulation is simply a contract, there can be no doubt that the hands of the Government are tied for ever; it becomes then a question who is to legislate in behalf of the much aggrieved class, the ryots? Certainly not the same Government. Who then? This is a question which it is not in our power to answer.

From what we have said above, we hope we have made it clear that the British Government has conveyed the proprietary right in land to a certain class of persons for ever upon a fixed revenue. If it is so, we make no hesitation in saying that it does not at all lie in the power of the Government to make any laws confiscating, curtailing, circumscribing and limiting, in any way, that proprietary right, or the lawful exercise of the same, by imposing many needless and unmeaning and irrational conditions. If any illustration in support of what we say here were needed, we have simply to quote one very important instance, and that is to be found in Chapter V of the Bill which treats of occupancy ryots, their rights and privileges. Of all ryots, the most privileged class we know was the *khood kasht* ryots. There is the clearest evidence that to even this class did never belong the rights and privileges which the present Bill aims at conferring upon its new-child—'settled ryots." Still this Bill professes to restore the ancient Land Law!! All that the *khood kasht* ryots were entitled to was to retain possession of their lands so long as they paid the rents demandable from them; but they could not sell or mortgage their holdings without the sanction and consent of the landlords. The latest legislative enactment on the subject—we mean Act X of 1859—which created for the first time the right of occupancy, could not venture to go fu ther than declaring such right to be merely heritable: but according to the Bill now before us, occupancy right is made saleable and transferable according to the pleasure and fancy of the ryot. It may be contended that the Legislature of the country has the power to make any law it thinks fit, whenever the condition and state of society and the people render it necessary, and that in spite of the fact that one class of the people benefits largely at the expense of another; but we venture to assert that this power can be exercised only in special cases, and the question is, has any such special case been made out? Has the Government made all the necessary enquiries to satisfy itself and the people, whom the law is to affect, that the present condition of things is such as to justify the introduction of a measure like the one contemplated in the Bill. To our knowledge and belief no enquiry at all, worth the name, has been made. If you say that there are official reports, but these official reports are not unanimous. They differ as widely as possible, and the best and most experienced officers, and therefore the best fitted to give an opinion in the matter, have most strongly condemned the Bill and pointed out very forcibly the mischievous results it will give birth to. Of course some officers, more sentimental than practical, have come forward as supporters of the Bill, but we ask whom, between the two classes of officers, we ought to believe and follow? Certainly not those whose great bias and prejudice against the landlords render their opinion almost quite valueless. It is also worth mentioning here that the same laws which may suit one local area may not be at all adapted to another. This shows the absolute necessity of a thorough and scrutinizing enquiry into the actual condition of things in every corner of this vast Empire, before a grand legislative measure like the one contemplated

in the Bill is introduced. If you for a moment consider the very important character of the questions the Bill deals with, you will, we are certain, readily and unhesitatingly pronounce that the hurry and haste with which the Government is proceeding to bring the measure to completion is most reprehensible. Again, conceding everything, conceding that the law is really required, we cannot make ourselves for a moment believe that it will at all benefit the class of people whom the Government so much wishes to help. It is notorious that this class of people is most improvident and thoughtless; they do not think so much of the future as of the present; and a marriage or *shradh* with the power of sale which the Bill confers upon the ryot, will in no time convey wholesale all his lands either to the mahajun or the land-jobber, and one sure result of this will be, that there will be much rack-renting and absolutely hard terms and conditions on which alone lands can be held Again, the endless litigation which the Bill is sure to lead to between landlords and tenants, though injurious to both, will be the more so to the ryots. A big, powerful, wealthy zemindar may afford easily to defray the expenses of a lawsuit for a time, but it will not be such an easy affair to the ryot. Then again the litigation will constantly keep the ryot away from his home and field, very much to the detriment of agricultural operations, and we all are aware of the unfortunate and disastrous consequences which ensue if such operations are not attended to in proper time. These, and many other thoughts like these, most inevitably lead us to the conclusion that you make the ryot a happy and prosperous man only in the Statue Book, but practically you lead him on the high road to poverty and ruin.

We have said above that a Bill may be most revolutionary, yet if the condition of the country and the state of society demanded it, the Legislature of the place has every right to pass it into law. We will even apply this test to find out how far the present condition of the people and country justifies the introduction into the Legislative Council of the present Bill, which it cannot be denied for a moment is most revolutionary in its character. While on this subject, we cannot better discharge our duty than by quoting here a passage from the speech of Mr. Roper Lethbridge, made the other day at a meeting held at St. James' Hall:—

"We have had Mr. Trevelyan's Bill, which has been already referred to, under discussion, and we have had expression of opinion from Lord Derby and Lord Carlingford on the result of the Irish Land Legislation, and it may be said that we have now before us ample grounds for judging fully of what are likely to be the disastrous results of the introduction of this Bill. Lord Derby confessed last week that the Irish Legislation was a revolutionary measure; but he said it was introduced because of revolutionary circumstances. Now, gentlemen, I ask you, can that plea be adduced for Bengal? Is Bengal in such a state that it must be described as revolutionary? What does the Duke of Argyll say on the condition of Bengal. He said: 'I could not fail to observe, when I was connected with the Government of India, that the portion of the country which has most grown in wealth is precisely that part of it in which the Government has parted with its power of absorbing rent, by having agreed to a permanent settlement.' The most prosperous part of India is admitted to be Bengal! And I would refer to a still higher authority than even the Duke of Argyll, to one whose personal knowledge is absolutely unrivalled on the point, and that is to Sir Ashley Eden, the late Lieutenant-Governor of Bengal. Sir Ashley Eden, after an extended tour in the interior of Bengal in 1877, thus spoke of the condition of the peasantry:—'Great as was the progress which I knew had been made in the position of the cultivating classes, I was quite unprepared to find them occupying a position so different from that which I remember them to occupy when I first came to the country. They were then poor and oppressed, with little incentive to increase the productive power of the soil. I find them now as prosperous, as independent, and as comfortable as the peasantry, I believe, of any country in the world; well-fed, well-clothed, free to enjoy the full benefit of their labour, and able to hold their own or obtain prompt redress for any wrong' Is that a revolutionary state of affairs? That passage which I have just quoted, it is fair to explain, referred only to Lower Bengal. It has been said that the condition of Behar is not so favourable,—possibly owing to the fact that there have been recently long minorities of the Chief Rajahs and landowners of Behar. during which the Government of Bengal has had the direct management of those estates. It may possibly be said, and it has been said, that the machine-like heartlessness of Government management has introduced a somewhat worse state of affairs there. But, gentlemen, I again call upon Sir Ashley Eden to bear witness to the state of the peasantry even of this less favoured part of the Lieutenant-Governorship of Bengal. Sir Ashley Eden, in 1881, addressing a deputation of the Behar landowners, thus spoke of the condition of the rural population in that part of the province: 'I can assure you that nothing has given me greater pleasure than to notice, as I have had ample opportunities of doing, the extraordinary improvements in the condition of the people. It is made manifest in a hundred ways daily, even to the most causal observer. I hear the same story from all classes, official and non-official, and it is a matter of general congratulation.' Is that, gentlemen, a revolutionary state of affairs to justify revolutionary measure? I maintain, after this statement of Sir Ashley Eden—and I can quote, and I intended to quote, but time fails me, other statements from various officials, Commissioners, Collectors, Magistrates, and others, but I will refrain from doing so—that it is an absolutely notorious fact that the position of the peasantry of Bengal is at the present time a good one. I am going to quote in the resolution, that I am about to have the honour of moving, some words of Lord Hartington on the subject of this very

Bill, or of portions of it. I will ask you to compare those words of Lord Hartington with the legislation of Lord Ripon and Mr. Ilbert, and I will ask you to say, is there not some anarchy of opinion, such as the Duke of Argyll spoke of last week? Is there not anarchy of opinion there? And who are these people on whose behalf I am now calling in the witness of Mr. Gladstone and Lord Hartington and the Duke of Argyll and others to plead before this assembly? They are the most docile, the most quiet, and most law-abiding, peasantry in the world. They are also a class of landowners who had proved themselves as loyal and as munificient as any other similar class in any country in the Empire. Why I ask, what have these people done that we should sow dissension amongst them? Is it the part of a wise Legislature to embitter the relations between the various parts of the country? We have all of us learnt in the Bible that a type of ancient patriot and wise administrator once, on seeing two of his kinsmen striving together, would have set them at one; he said, 'Sirs, ye are brothers, why do ye wrong one to another?' But, gentlemen, our modern administrators do not even wait until they see their kinsmen striving together; they find them living together in peace and amity; they find a condition of affairs in which there is mutual esteem and mutual respect, resulting in well-earned prosperity and contentment; and they apply themselves to set race against race, envenom class against class, and to bring all things into confusion and anarchy."

We will now turn our attention to another portion of the Bill before us, in which the Legislature, on the assumption, which in our opinion has no foundation at all, that the ryots in the country are so imbecile and so poor in intellect and in intelligence that it would be nothing but just, equitable, and expedient, if it interposes its authority in the protection of the interest and welfare of the ignorant and weak class by ruling absolutely that, in all matters of contract between landlo d and tenant, whether past, present, or future, as also in all questions relating to adjustment and enhancement of rent, the ryots are to be deemed as quite incompetent and incapable to deal for themselves, lays down that though the landlord shall have to carry out and fulfil strictly his part of the contract, such contract, as far as the tenant is concerned, is not and cannot be binding upon him except under certain special circumstances and conditions, and that all matters of adjustment and enhancement of rent must be made through the Court or under the sanction and approval of some officer of Government. These provisions in the Bill naturally make us forget that we are drawing every day very near the threshold of the twentieth century. It is not certainly a piece of legislation compatible at all with the progress and advancement of the age.

If the Legislature of the country, so far back as the year 1812, considered it safe and prudent to leave the landlords and tenants to enter into whatever contracts they thought best conducive to their interests, we fail entirely to see any force or cogency in the argument which, for the first time now at the fag-end of the nineteenth century, is advanced in support of the proposition that the position of the tenants fully justifies the denial to them of the freedom of contract, not generally however, but only in the particular instance in which they enter into any agreement with their landlord. There are contracts of a graver and more important character to enter into which the capability of the tenant is not questioned at all, and it is quite right that it is so; for man is a free agent, God has made him so, and we cannot find, with all our best endeavours to solve the difficulty, anything peculiar subsisting in the relation of landlord and tenant, which makes it desirable, despite all divine laws, that the tenants ought to be by a legal fiction brought down from the class of free agents, whenever there is a contract to be made between him and his landlord.

There is a full recognition by the Legislature of the country of the power and competency of the ryot to enter into any contract he thinks fit with his landlord so far back as the year 1812; for in Regulation V, passed in that year, we meet with the following section:—

"*Section III.*—The proprietors of land shall henceforward be considered competent to grant leases to their dependent talookdars, under-farmers, and ryots, and to receive correspondent engagement for the payment of rent from each of those classes, or any other classes of tenants, according to such form as the contracting parties may deem most convenient and most conducive to their respective interests. Provided, however, that nothing herein contained shall be construed to sanction or legalize the imposition of arbitrary or indefinite cesses, whether under the denomination of *abwab*, *mahtout*, or any other denomination. All stipulations or reservations of that nature shall be adjudged by the Courts of Judicature to be null and void; but the Courts shall, notwithstanding, maintain and give effect to the definite clauses of the engagements contracted between the parties, or, in other words, enforce payment of such sums as may have been specifically agreed upon between them."

Again, why there should be a special legislation in the matter of contracts between landlords and tenants alone? Why should the tenants be deemed incapable to enter into a valid and binding contract with their landlords?

Section II of the Contract Law (Act IX of 1872) says:—"Every person is competent to contract, who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject."

It was proposed to impose certain arbitrary conditions in the matter of contracts between ryots and indigo planters, as it is now intended to do by the present Bill in contracts between landlords and tenants, and we had in the year 1835 the expression of

opinion on the subject from no less a man than Lord T. B. Macaulay. That opinion is so sound, cogent, and forcible, that we cannot resist the temptation of giving here portions of it:—

"The Government have asked whether the Commissioners think that there would be any advantage in declaring invalid all contracts for indigo which shall be for a term longer than one year. I should greatly disapprove of such a measure. It would evidently be opposed to a great general rule, and it is not made out to my satisfaction that the circumstances of this particular case form any exception to that general rule.

"The general rule is this: That grown men, not idiots or insane, should be suffered to make such contracts as are not injurious to others, and as appear to them to be beneficial to themselves. To say that the ryots of this country are mere children and ought to be specially protected is, I conceive, quite incorrect. They are not intellectually superior to the peasantry of other countries. They are as well acquainted as we are with the difference between an anna and a rupee, or between a month and a year. They are suffered to make the most important contracts; and nobody proposes to deprive them of this power, except when indigo is in question. They marry and govern their families. They are treated by our Courts of Justice as persons quite capable of comprehending the nature and consequences of their acts. If they are not so, if they are not able to judge for themselves in matters which concern only themselves better than the Government can judge for them, they will require protection, not in this particular case alone, but in ten thousand other cases. I conclude, therefore, that there is nothing in the intellectual state of the ryot which renders proper that contracts freely made by him should be set aside. But it is said these contracts are not freely made. Force and deception are employed. The peasant assents to disadvantageous terms from fear of bludgeon-men, or he is tricked into signing some paper which he does not understand. I answer that in all such cases there ought to be a remedy. The law, I apprehend, would even now reach these oppressive and fraudulent practices. If not, the law ought to be altered. In every case of coercion or of deception, the contract should be set aside, and the tyrannical or dishonest capitalist should be punished with exemplary severity. But what is now proposed is that we should attack not the evil, but a circumstance in itself wholly indifferent; not tyranny or dishonesty, but a certain term arbitrarily fixed upon; not unfair contracts, but long contracts. The sound rule is this. If a ryot has been intimidated or duped into making an agreement for a month, a day, or an hour, cancel the agreement and punish the wrong-doer. But if unterrified and undeceived, he has made a contract for two or three seasons, enforce it. A Government cannot be wrong in punishing fraud and force; but it is almost certain to be wrong if, abandoning its legitimate functions, it tells private individuals that it knows their business better than they know it themselves, and is resolved to serve them in their own despite

"The proposition now under consideration belongs to a class of propositions which cannot be regarded with too much suspicion. If there be any one political truth proved by a vast mass of experience, it is this, that the interference of legislators, for the purpose of protecting men of sound mind against the inconveniences which may arise from their own miscalculations, or from the natural state of the markets, is certain to produce indefinitely more evil than it can avert. It was no doubt a humane feeling which dictated usury laws; laws against forestalling and regrating; laws for raising the wages of labour; laws for lowering the price of commodities; laws for limiting the number of hours during which adults should work; and many other laws of the same kind. But the invariable effect of such laws has been to injure society, and to injure more especially that portion of society which the Government humanely wished to protect. The needy man who could have borrowed at 10 per cent., when cursed with the compassionate aid of the lawgiver, is forced to pay 15 per cent. That which would have been scarcity if prices had been regulated by the avarice of the corn-dealer, becomes a famine when the prices are regulated by the benevolence of the Government. The measure which we are now considering, is a measure of this kind,—a ryot consents to bind himself to deliver a certain commodity to the capitalists during several successive seasons. If he has been terrified or deluded into making this agreement, the agreement is of course null. But if he has not been terrified or deluded, on what principle are we to refuse him permission to bring his only commodity, his labour, to market in his own way, and to dispose of it on such terms as, in the state of the market, are the best which he can obtain?

"If we cannot prevent the indigo-planter from oppressing and cheating the ryots, this restriction will evidently be a mere nullity. If we cannot prevent the planters from oppressing and cheating, then no ryots will make a long contract without what he thinks a *quid pro quo*. And I conceive that a ryot is infinitely a better judge of what is or what is not *quid pro quo* in such a case than any Government, even the most enlightened, can possibly be.

"I therefore object to this provision, and to all other provisions of the same kind which have been suggested

"On the whole, I am not satisfied that any peculiar system of law is required for the indigo districts. I believe that the evil which exists in those districts differs little either in kind or degree from those which may be found almost in every part of our Indian Empire. There is a bad judicial system. There is a bad police. There is a people accustomed for ages to be plundered and trampled upon, and ready to cringe before every resolute and energetic oppressor. The system of dacoity and the system of thuggee are more malignant evils of the same family. They are evils which never could exist to the extent they exist here, in a

country where the tribunals and the police were efficient, or in a country peopled by a manly and high-spirited race."

The above opinion, we all know, did prevail; for in pursuance of it the idea of encumbering indigo contracts with needless and unusual conditions and restrictions was altogether abandoned. The present case is on all fours with that in which the opinion was given; the only difference being that instead of indigo-planters, we have here, as the other party to the contract, landlords.

Last year Baboo Nundun Lall of this Association made the following remarks on the subject of contracts between landlords and tenants:—

"One thing very noteworthy is that, while the legislation of 1859 and also of 1869, in treating of rights of occupancy, fully recognized and upheld the force and validity of contracts made between landlords and tenants, the present Bill takes them away in one sweep, regardless of the reasonableness or otherwise of such contracts. I do not think under the circumstances it will be saying too much if I characterise the present Bill as quite one sided, for it looks throughout to the benefit and advantages of the ryots. Legislature should mete out justice with an even hand; but the present Bill is an attempt at legislation, which quite overlooks the rights and claims of zemindars, and showers upon the ryots benefits which they themselves never dreamt of. If in making the provisions in the present Bill, liberating without any reason or rhyme the ryots from the trammels of their own voluntary contracts, and holding the zemindars bound foot and hand by them, the Legislature has proceeded upon the assumption that the ryots are a class of people weak in intellect and not quite able to understand the effects of their contracts, I am bound to say that it is an assumption most unreasonable and quite out of place. We all know that, as the age advances, the intellect and understanding powers of men go on improving If during the time the laws of 1859 and 1869 were enacted, the ryots had brain enough to comprehend the effects of their contracts, they must necessarily be now in a better position to judge of their own acts. Is it not, then, an anomaly that while the other laws held the ryots bound by their contracts, more recent legislation should upset the most solemn contracts, so far as the ryots alone are concerned, on the supposition that they are intellectually a much weaker class of people. One very deplorable consequence of such upsetting of contracts is, that it completely destroys all confidence of the people in the Legislature of the country. This is quite natural. Relying upon the declarations of the Legislature, as set forth in the Acts of 1859 and 1869, the zemindars have minded no trouble and expense in making settlement of lands, in securing written contracts from the people they settled with, expressly waiving all claims to rights of occupancy. Now, according to the present Bill, these contracts will become mere waste paper, so far as the ryots are concerned. A contract is too sacred a thing to be trifled with in this manner."

The above remarks are beyond all doubt just, correct, and proper, and we do not see how any one can reasonably say anything to the contrary.

If the zemindar is the actual proprietor of the land, we do not really perceive how it can be at all in the power of the Government to interfere in any arrangement he may make in regard to his own lands with his ryots, whether in the shape of contracts or adjustment and enhancement of the rents, so long as he does nothing amounting to an offence punishable under the Penal Code As absolute owner, he is quite at liberty to make any terms he thinks proper for allowing the ryots to occupy his lands. It is entirely a private matter between him and his tenants, and all interference of the Government appears to us to be quite unjustifiable and improper. Our opinion finds echo in what was observed by Mr. Shore and Mr. Francis, as will appear from the following passage which we copy from a little book by Mr H. Bell, entitled "the Restoration of the ancient Land Law:—"

"But it is said that in prohibiting the freedom of contract between the landlords and the tenants, the Government are merely reviving and restoring the ancient land law of the country. In this ancient land law two principles, it is asserted, are found to be embedded. First, that the resident ryot cannot be ejected from this holding in the village lands so long as he pays the established rent; and second, that it is the right and duty of the ruling power to determine the rent payable by the ryot to the zemindar. No one, as far as I am aware, has ever denied that a ryot with a right of occupancy is entitled to hold the land so long as he pays the rent; but the question is, who fixes the rent, the zemindar or the State? I emphatically deny that the ruling power have ever interfered in Bengal to determine the rents which the ryots were to pay to the zemindars. In other provinces of the Mogul Empire, where, as in Madras, there were no zemindars, the State professedly settled the proportion of the produce which the cultivators had to pay. 'The Institutes of Akbar,' says Mr. Shore, 'show that the relative proportions of the produce were settled between the cultivator and Government, yet in Bengal I can find no instance of Government regulating these proportions'

"The reason is obvious. In Bengal, the Mahomedan Government assessed the zemindars: in the other provinces of the Empire, where there were no zemindars, the Government professedly dealt with the cultivators But even where the Government professedly dealt with the ryots, it was found impossible in practice to assess each individual cultivator. It was one of the schemes of Akbar to have a general survey made of his empire; but we are told that at a very early period the scheme of Akbar to assess fields was discovered in practice to be full of embarrassment; and before his measurements even were completed, he was reduced to the necessity of assessing whole villages, and leaving it to the people themselves to distribute the portion payable by individuals.

"Mr. Shore, after stating that he could find no instance in Bengal of Government fixing the rent of the ryots, observes in a subsequent part of the same Minute that, 'the regulation of the rents of the ryots is properly a transaction between the zemindar or landlord and his tenants, and not of the Government; and the detail attending it is so minute as to baffle the skill of any man not well versed in it.' I unhesitatingly assert that there never was a time when the zemindar could not make what terms he pleased with his ryots, and the *pergunnah* rates, or the established rates of which we hear so much, were the rates which the zemindar himself established. How could it be otherwise? If he did not establish them, who did? The Government did not, for Mr. Shore tells us that there is no instance of Government interfering to regulate these rates in Bengal. What were the cesses which the zemindars before the Permanent Settlement were accustomed to levy, but an increase of the rates? 'The cesses,' says Mr. Shore, 'imposed by the zemindar were an enhancement of these rates, and arbitrary at first without being oppressive.' For what object were the lands of the ryots periodically measured, for what object were inquiries made as to the quality of the land and the articles it produced, except to obtain an increase of rent? 'The rates,' said Mr. Shore 'varied with each succeeding measurement; and when they become too heavy the ryots abscond, or the zemindar allows them a compensation by giving them other lands at a favourable rate.' In the face of these facts, how can it be contended that the zemindar did not fix the rates? The lands were not measured by the Government officer, but by the zemindar's own servants. There was no one but the zemindar who could have fixed the rates. A special officer called the '*halshanah*,' whose special duty it was to measure, was attached to every zemindar's establishment. General measurements, we are told, were made every 10 or 15 years, and the general rates as determined by the measurement would remain in force till the next measurement. These rates would then be the established rates of the village, pergunnah, or other division until revised by a subsequent settlement. But as the rent was fixed with reference to the quality of the land and the nature of the crops grown upon it, there was a great diversity of rates even in a single village. This again shows that the rates could not have been fixed by the ruling power, but must have been a matter of adjustment between the zemindars and ryots. Mr. Francis, writing as a member of Warren Hastings' Government in 1776, says: 'The amount of rent must be settled between the zemindar and his tenant. Government can never descend to the ryots, so as to fix any general assessment upon them, because the rates of land depend on a number of circumstances; such as the quality of the soil, the articles it produces, of which there may be a variety in one village; besides, vicinity to markets or water-carriage makes land of more or less value to the cultivator.' I do not know how it is possible more conclusively to show that the ruling power neither fixed nor attempted to fix in Bengal the rates of rent which the ryots were to pay."

It is clear from the extract which we have just given that the adjustment and enhancement of rent, and the determination of the terms of a tenancy, have always been left entirely to the zemindars and tenants, and there has not ever been any interference in such matters on the part of the Government until the year 1859. In that year a law was made in which the Legislature for the first time made certain encroachments upon the rights and privileges of the landlords, the principal of which are—

(*a*) creation of occupancy rights; and

(*b*) the rule that the rents of occupancy ryots cannot be enhanced except upon certain specified grounds and after certain formalities have been gone through by the landlord.

We need hardly mention that we are here alluding to Act X of 1859. But this Act even was not so reckless and inconsiderate as the present Bill, for it respected and kept inviolate all contracts between the two classes. It was simply because the Act left room open for contracts that the inconvenience, difficulty, and trouble, which arise from the rules prescribed therein, *quoad* enhancement of rent, were not so generally experienced. Compare the present Bill with Act X of 1859 on the subject of enhancement, and you will see that the proposed legislative measures are extremely hard to the zemindars; while prohibiting contracts, it lays down so many difficult, intricate, and stringent rules in connection with enhancement, that the zemindars must give up all hopes of succeeding in ever securing an enhancement.

We have all seen what little success has attended the attempts of zemindars to enhance under the existing law, the rules of which are ten times simpler, easier, and less intricate than those which the Bill before us contains. We therefore can very safely assert that these rules will never work, and that after all the trouble and expenses that have been wasted upon the preparation of price-lists and table of rates, the whole system will collapse or remain idle and useless as a most unwieldy and unworkable thing.

The result is obvious. There will be no enhancement of rent at all in future, for you cannot enhance by contract or through the medium of the process of enhancement: so the chapter in the Bill about enhancement of rent of occupancy ryots is more illusory than anything else; more a blind than a real means to the attainment of the object which it professes to have at its gift. In other words, it comes to this—Government does not consider it safe and prudent to say at once that it shall not be in the power of the landlords to increase the rents of their occupancy ryots, and therefore what it cannot venture to do openly, it does by under-hand means. It gives the right of enhancing to the landlords, but takes

particular care to surround it with close-laid and strong thorns, so that no landlord can ever hope to approach it.

Having made the above general observations, we now proceed to examine and notice some of the more important sections of the Bill in detail. We ought to state here, once for all, that it may not be supposed that because we do not expressly make mention of other objectionable sections in the Bill, they have our approval. To notice each and every obnoxious section and comment upon it, and lay bare its pernicious effects, would be a long and heavy task, and this accounts for our selecting the more important sections for our comment.

Section 26. (1). Every person who, for a period of 12 years, whether wholly or partly before or after the commencement of this Act, has continuously held as a ryot land situate in any village or estate, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled ryot of that village or estate.

(2). If in any proceeding under this Act, it is proved or admitted that a person holds lands as a ryot, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years held the land or some part of it as a ryot.

(3) A person shall be deemed, for the purposes of this section, to have held land continuously in a village or estate, notwithstanding that the particular land held by him has been different at different times.

With this definition of settled ryots in (1), and the presumption in (2), and the explanation in (3), the Legislature may as well remove from the Bill the chapter relating to non-occupancy ryots and all the provisions connected with them; for it will not be long before all the ryots in a village or estate would fill the position of settled ryots. Who will not try to secure for himself a better position and a higher status, if he knows that he has only to claim it, and then it will come to him very easily? Every single ryot, we are almost certain, will put himself up as a "settled ryot," and his claim will be denied by the landlord, for, as a matter of fact, the ryot squatted on the land only a few years ago. This will take the ryot and his zemindar to a law court for the settlement of the question. There the ryot will have all the advantage on his side, and the zemindar will find his way beset with all manner of difficulties. The ryot has the presumption of law in his favour, and he has in addition another presumption to help him, and that is being the more helpless and weaker party in the contest, the courts' sympathy will naturally be with him. The zemindar has to displace the legal presumption by actually proving that the ryot has not held any land in the village for 12 years All the evidence he can adduce will be his village papers and the testimony of his village servants. We all know what reception evidence of this kind meets with at the hands of the courts. The court will not believe the evidence; it will say, "nothing is so easy for a powerful and wealthy zemindar as to manufacture such evidence with the aid of his servants for the purpose of depriving a poor and helpless ryot of his position and status of a 'settled ryot.'" The result will be the zemindar will lose the case and a lot of money with it, in the shape of fees to pleaders, barristers, mooktears, and a large number of nameless people in the court, whose good graces must be purchased when a suitor thinks of carrying his case to its termination without all the additional little worry and trouble which it is in their power to inflict.

Far more unhappy and miserable will be the position of purchasers, whether by private or public sales, either in execution of decrees or for arrears of Government revenue. We have spoken above of a hereditary zemindar who has in his possession some sort of evidence. Landlords who will come to the village as purchasers will be quite helpless, for they will have no evidence at all by which they can attempt to rebut the presumption. Some may say that this cannot be true as regards purchasers by private sales. We, however, maintain that it is perfectly true. The utmost a prudent man can do when he purchases, is to secure from his vendor *jamabandi* papers of some years, but he cannot expect to get papers for more than 12 years consecutively.

One sure effect of these provisions will be, that land will find no place in the market if this Bill becomes law. Having some idea of the position to which this Bill reduces the landlords or zemindars, and the rights and privileges it bestows upon the ryots, no man would consider it worth his while to invest money in land, even when such land is put up for sale for arrears of Government revenue. Some people say that this is exactly what the Government really wishes should happen, for then it will have the opportunity of buying itself gradually all the estates settled permanently, and thus smash to pieces the Permanent Settlement.

When we consider the several components which constitute a "settled ryot," we confess we cannot maintain our seriousness, for in spite of all our endeavours, we are unconsciously carried away by the risibility the definition excites by its patent absurdity. Now what are the elements which go to constitute a "settled ryot." They are—

(*a*) The village or estate must be one and the same; and
(*b*) Any land, how infinitesimal soever it may be, say 10 *cottahs*, held in the village continuously for 12 years, will confer upon the ryot the status of a "settled ryot" in regard to say 200 *bighas* of lands settled with him only two years ago under a *pottah* expressly providing against the accrual of a right of occupancy.

Can anything be more preposterous than the above. We have done our best, but have failed to discover any logic in this. When Act X of 1859 was passed, creating for the first time a novel right, it defined the right in the following words:—Section 6.—"Every ryot who shall have cultivated or held land for a period of twelve years, shall have a right of occupancy in the land so cultivated or held by him, whether it be held under *pottah* or not, so long as he pays the rent payable on account of the same."

There is some sense in this definition; one can understand it; if a ryot has held a piece of land continuously for 12 years duly paying rents for it, a sort of confidence grows naturally between the parties; the ryot thinks that, if he is punctual and regular in paying rents, his landlord will allow him to continue to hold the lands, and under this assurance he does all he can to improve the land. Likewise the landlord sees that the ryot is a well-behaving ryot and pays his rents regularly, and thus he never thinks of turning him out. Thus you see the ryot becomes attached to the land and the zemindar to the ryot. Under these circumstances, if you confer upon the ryot a right of occupancy, you do a thing which is not and cannot be felt as a hardship. But none of these reasons can apply to the holding of 200 *bighas* to which we have alluded above.

It is a mistake to suppose that fixity of tenure is always a real good and blessing. In illustration of this, we cannot do better than quote here what Lord Bramwell said the other day before the meeting in St. James' Hall. He said:—

"Now, see the mischief of interfering with this. Here are two farms; we will say two pieces of land if you please. Well, they are in the hands of two tenants; we will suppose each pays £50 a year. We will suppose that either of these tenants, if he could, would get both pieces of land, and would be content to pay £150 a year for the two—perfectly possible as you know—because there might be some convenience of water or access to roads, or a difference of soil, or other things which would enable a man to cultivate more profitably. If you treat the peasant cultivator as a man who has fixity of tenure, and whom you cannot turn out of one of these farms in order to join it to the other, what is the consequence? That you have diminished the value of the two farms taken together by the amount of £50 a year. Well, that is not a loss to the owner of that land only, it is a loss to the community. The wealth of the community is made up of the wealth of the individuals who compose it, and it is all very well to sneer at landlords, and to talk about landlordism; but the best thing that could happen would be to take these two unfortunate people and to let the man who had got a personal interest in doing so make the best of his land; because, although the £50 will go into his pocket, it will only go into his pocket because it can be spared out of the pocket of the man who will take the land."

Hitherto the most desirable property in the country has been land. If a man had money to invest, he would more gladly invest it in land than in anything else. But if this Bill becomes law, we can never expect to see any fresh investment in land; on the contrary, we will not be at all surprised if those who have landed property would try to get rid of it as a most unprofitable burden. Landlordism would be denuded of all its charms, and no wonder that it will be so, for in reality it will no longer be an affair of landlord and tenant. You virtually divide the property between the zemindar and the "settled ryots," who will be considerable in number, and the most unhappy result of this will be, that the zemindar would become more a co-parcener with his settled ryots in the property with very slight differences only, viz—

The zemindar will hold paying revenue to Government, and the settled ryots will hold paying rent to the zemindar.

The zemindar can alienate unconditionally his estate, and the settled ryot can sell his estate, subject to the claim or right of pre-emption of the landlord.

This change will no doubt go very much to reduce the prestige and influence of the landlords, and we may safely predict that it will have a very pernicious and demoralizing effect upon the ryots, who will become quite insubordinate and rebellious. The growth of feelings like these would frequently lead to perturbations of the public peace, harmony, and tranquillity—a state of things which is extremely undesirable as highly injurious to both the classes.

We have elsewhere pointed out how the many privileges which the Bill confers upon the settled ryots cannot really prove in the least beneficial to them. Well then, we arrive at this result. The ryots will not be at all benefitted, and you most needlessly demolish the landed aristocracy of the country, which has been found upon numerous occasions and in many instances to be very useful to the State and the community in general, and introduce confusion, turmoil, and animosity, and throw everything out of order and system, formed and established gradually in the course of a century. We confess we are not able to find any wisdom in this !!

Section 32. (4.)—We object to the clause in the sub-section (4), which says—"the ryot shall either abstain from selling the land." We do not see why, after the landlord undergoes all trouble and expense, this privilege should be given to the ryot. In our opinion he ought to be compelled to sell when the matter has proceeded so far.

Section 33.—This provision is not in our opinion quite sufficient to meet every case. A man owning large landed estates may not have any knowledge of the fact that the occupancy right of some ryot of his is to be sold in execution of a decree, and he cannot therefore be present to bid at the sale. Again, the language used would make it appear that the landlord himself should bid at the sales. If this is really intended by the Legislature, then all big zemindars will be necessarily shut out.

Section 35. (1).—We do not see how this alone can possibly protect the interests of the zemindar without some provisions entitling him to object to the transfer. There may be private understanding between the ryot and the ostensible donees, by which the ryot parts with his land for its full value; but in order to avoid and defeat the provisions of section 32 (1 to 6), makes the transfer by a deed of gift. Again, the ryot may solely for the purpose of harassing and causing annoyance to his landlord make a real gift of his occupancy right in favour of a person who is the bitterest enemy of the zemindar.

About the provisions of the Bill relating to enhancement of rent of occupancy ryots, we have already expressed above our opinion. The rules the Bill lays down are so intricate, that we fear that they will be found quite unworkable, and that the landlord who would make an attempt at enhancement under the rules is sure eventually to meet with chagrin and disappointment after he had wasted all his energies and good money upon the proceedings.

We should add here that it will not at all be fair and proper if these rules are made applicable to alluvial lands, and they must apply unless the Legislature expressly removes such lands from the operation of the rules. We should say a few words to show how the rules are inapplicable. These lands upon their first formation are not so productive as they do become in the course of two or three years, when they are capable of yielding and do yield the best and the richest crop. The rent at which the lands are settled upon their first formation cannot be a fair and equitable rent after two or three years, but the zemindar cannot expect to enhance the rent if these rules applied. We need hardly say that we are speaking here of lands being added to the holdings of occupancy ryots by alluvion.

Section 51. (*b.*)— In the matter of enhancement of rent upon the converse of this ground, that is, upon the ground—

" that there has been a rise in the average price of staple food-crops in the locality or at the usual markets,"

the Legislature lays down a limit beyond which the enhancement cannot go. Is it not then, we ask, fair and equitable to prescribe instead of leaving the matter absolutely to the whim and fancy of the court, a limit within which the reduction of the rent of the ryot ought to be confined. But so queer and curious is the course of legislation, that there is, we fear, hardly a section throughout the Bill which one can hold up as quite fair and just.

Section 52. (2).—We confess to our utter inability to comprehend how it will be possible to collect the necessary materials which would enable Collectors to prepare price-lists relating to past times. Of course, if you do not care for accuracy, there will be no difficulty at all in the preparation of such lists. But in our opinion accuracy is of the greatest importance, for these price-lists are evidently intended to be guides for the courts in cases of enhancement.

CHAPTER VI.

We cannot conceal our great surprise at reading Chapter VI, treating of " Non-occupancy ryots." It makes us think that it is the intention of the Legislature to throw every possible difficulty in the way of the landlord, and to make for him a bed of thorns throughout, for otherwise it becomes inexplicable why all the conditions and restrictions even in relation to non-occupancy ryots, as are to be found in this chapter, should at all be thought of, much less made the subject of legislation. A non-occupancy ryot means a tenant-at-will, if so, everything connected with such tenant and his tenure should be left entirely to the option of the landlord, and there is scarcely any room for any of the conditions and restrictions which the Bill imposes !!

Section 68. (1).—But if the tenant does not pay each instalment of rent before sunset of the day on which it falls due, what remedy does the Legislature provide for the landlord ? None whatsoever, unless it pleases to call the following provision a remedy :—

(3).—" Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear."

Compare this with the law regarding payment of Government revenue, and you will see how vast the difference is. We all know what the Sunset Sale Law is Under that law, if any instalment of Government revenue is not paid by the zemindar before sunset of the day on which it falls due, his estate becomes liable to sale The source from which the zemindar must draw to be able to pay punctually his Government revenue, is the rent due to himself from his ryots. Is it then not fair and proper for the zemindar to ask for some legislative provision, which would fully and completely prevent the ryot's neglecting payment of the several instalments of rent as they fall due.

We hope to be excused if we say anything here doubting the sincerity of the offer of help made to the zemindars by the Government in the matter of realization of rents from the ryots. We cannot easily account for the absence in the present Bill of any provision for facilitating the realization of rents, otherwise than by questioning the reality and sincerity of the offer. It cannot be that the mighty minds who have the law-making of the country in their hands, and who could prepare such a long and elaborate Bill, introducing so many novel and strange phenomena into the country, and providing for such a multitude of things for which there was not the slightest need to make any provision at all, found themselves, as if by some spell, quite unequal to the task of framing a short simple chapter rendering the collection of rents easier and more regular and punctual. We all know to what a trite occasion this stupendous and marvellous work of legislation owes its birth. It is only this—Government was convinced that it lay under an obligation to the zemindars to place within their reach a means and way by which they could realize rents from ryots with facility, and hence it proposed to make a law by which this object could be secured. This was and is a real and serious want; if you do not supply this want, why then legislate at all, and legislate about matters which never were thought of by anybody, whether zemindar or ryot, and in which you were never asked by any one to exercise your brains. It is a

great pity that you have given yourselves so much mental labour in producing a work for which nobody, whether zemindar or ryot, ought to thank you. The zemindars cannot thank you, because you have done them the utmost injury you could : and the ryots should not thank you, because, though you profess to do them a good office, there will soon come to them a time when they will in one voice say, that it would have been much better if you had never thought of them. But wait, let us see if we have digressed, though there should be no surprise if we did, and if there is any contagion in digression. If we have at all digressed, it must be because we have caught the contagion of the digression—the very wide and extraordinary digression—made by able and more powerful minds of which we have been speaking. Those minds were asked to frame a law for helping and improving the position of the landlords : they sat down to do the thing most needed, but when they rose, they left upon the table a Bill, as the result of their labours, which is a cup of the most malignant poison !!

Now, what we have a right to insist upon is that you are bound to confine yourself within the four corners of the original proposition, and not budge an inch even out of them. Then the most sensible conclusion at which every right-thinking man will arrive is that the Bill now before us should be altogether shelved, and in its stead ought to be framed a short and simple Bill to facilitate the realization of rents.

It has never fallen to our lot to be connected with the business of law-making, and it is therefore no subject of wonder if, in our first attempt to prepare a skeleton sketch of the Bill, which is calculated in our opinion to answer the purpose aimed at, we bungle a little. Regardless of any ridicule which our rough sketch may expose us to, we have ventured to annex to these Notes an Appendix marked A, which embodies certain rules which, in our opinion, may be safely reduced into a law to render the collection of rents easier and more punctual. As we do not claim for ourselves infallibility and perfection, we should, and we do so very cheerfully, leave full power to the Legislature of our country to adopt them with any additions, alterations, and amendments it may think fit to make.

Section 70 (4).—Is not this a very hard rule. To write and give receipts is, and will continue to be, the business of the village servants The duty chiefly belongs to the putwari, who holds at the present moment a very singular and anomalous position in the village. He eats the salt of the zemindar, for he is paid by him, but when we come to consider how far the relation of master and servant is agreeable and pleasant between the putwari and the zemindar, we can unhesitatingly say that it cannot be more unsatisfactory and harrowing than it now is. The servant is so secure in his office, that he does not care a pin for what his master may think of him. He knows that it is not in the power of the man, who pays him for the work he does, to turn him out of his own authority, and this knowledge, in ninety cases out of a hundred, makes him quite neglectful of his duty. The zemindar is quite powerless, and he has to remain quiet, though he sees with his own eyes that his business is going to the dogs. He does not go to apply to the Collector to get the man dismissed, for upon previous similar occasions, when he did seek remedy in that direction, he found to his cost that he was a fool to do so, for it was a regular fight in which he had to spend his time and money, and then return home with an order in his pockets requiring him to put up with the putwaris he complained of, and in addition their greater insolence and impertinence.

We have given above, in a few words, the nature and character of the man who is to be entrusted with the duty of writing and giving receipts. It will not be at all surprising if this man, from motives of dishonesty, or from a pure desire to injure his master, issues receipts in a manner opposed to the directions of the law. Is it then at all just and proper to punish the master for the sins of his servant? The punishment again may be a very heavy punishment if this kind servant happens to be disposed to inflict it. Let us suppose a case like this : There is a village or estate with a jumma of say Rupees 5,000 a year. This is paid, we will suppose, by 100 ryots. These ryots pay, in the middle of the year, only a very small portion out of large arrears due by them. The putwari issues to every one of these ryots receipts, without inserting in them the particulars which the law requires. The penalty for granting an informal receipt as laid down here is—

"If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given."

Now, whether in the case supposed, the punishment will not be a very severe punishment? The man, guilty of infraction of law, escapes scott-free, and the zemindar is made the scape-goat. This provision in the law would strike any Legislature as extremely preposterous; the case is quite different with our present Legislature, which throughout this Bill has strenuously maintained a most hostile attitude towards the zemindars, and the chief aim of which is to crush down the landed proprietors of the country !!

Section 89 (1), (2), and (3) (*a*) and (*b*).—We fail entirely to see the necessity for rendering the matter so complex as the provisions herein laid down are sure to make it. The simpler course, in our opinion, appears to be this. If any improvement is really needed, the zemindar is the person who should make it. Why then make it the subject of contention between the zemindar and the ryot? By leaving the making of the improvement to the zemindar, you avoid a fight before the Collector between him and the ryot, and you thus save both the parties from a good deal of expense which this fight is sure to bring in its train, and you further leave no room for all the most intricate questions arising, which,

as a matter of course, will arise, if you retain in the Bill all the provisions about compensation to be paid to the ryot when his ejectment takes place. But it may be contended that, by leaving it to the zemindar, there will be this very evil consequence, and that is, he will never think of making it, though it be needed most. We answer that this is highly improbable, and for the following reasons :—

(*a*). Between the two, the man who can more easily afford to make the improvement is the zemindar;

(*b*). It is the interest and advantage of the zemindar to make the improvement, provided it is necessary, for he will gain by it in the shape of increased rents ; and

(*c*). The man better able to judge whether a particular work would be really an improvement is decidedly the zemindar, and not the ryot, whom the authors of this Bill have everywhere treated as worse than mere suckling babes.

Even supposing that the zemindar is so negligent of his duty, and so unmindful of his self-interest that, even when it is really necessary, he neglects to make the improvement, that certainly would be a special case for which the Legislature should provide. But generally we think it more advisable and proper to leave the making of the improvement to the zemindar. We do not at all, as we have already said, object to the Legislature making a suitable provision to meet the special case where an improvement is really needed, and the zemindar, whose duty it is to make it, neglects to do the needful.

Being of opinion that the making of the improvement should be left entirely to the zemindar, we need scarcely say that we are opposed to the "prior right" which the sub-section 2 gives to the ryot.

We are strongly opposed to the reference to the Collector, provided for in the sub-section 3. In the first place, there will be no room for the reference, when our opinion is that the making of the improvement should be left entirely to the zemindar, and in the second place we are opposed to the reference, if the decision of the Collector upon such reference is to have the finality which the Bill gives to it The Legislature seems to us not to attach due importance to the questions which may arise in connection with the improvements. It is not difficult to conceive a case like this. Some refractory ryots combine and propose a particular work as an improvement, their object being to injure their landlord. A difference of opinion arises between the ryots and the landlord—the ryots considering that work to be an improvement which the zemindar believes would be highly injurious to his property. The result of this difference will be a reference to the Collector, of course upon the application of the ryots, for the zemindar will be the last man to approach that functionary and invoke his opinion in a matter about which he has made up his mind. No doubt there are many honourable exceptions, but we are, we believe, quite correct when we say that there are men filling this high and important position who are, as if it were, made by nature to view at things from a wrong point. The reference we have been speaking of is made to a Collector of that typical character, and he, in his wisdom, declares the work to be an improvement which the zemindar maintains to the last to be highly injurious to his property. The declaration is made, and the refractory ryots lose no time in executing the work. This work proves actually destructive of the property of the zemindar, and thus the zemindar incurs a heavy loss for which he can hold no one as responsible to him.

Section 93 (1).—We certainly object to this section as it now stands. It should be so framed as to exclude altogether non-occupancy ryots. We know that the Bill gives such ryots also power to make certain improvements, but what we firmly maintain is that, if they avail themselves of the power which the law gives to them, they can do so at their own risk. They know that their footing in the village or estate is for a time only, and that they are liable to be ejected at any time, and if with such knowledge they make any improvement, they cannot and should not look to the zemindar for compensation when they are ejected.

Record of rights. Settlement of rents. Tables of rates, and Record of Proprietor's private lands.

We need say nothing in particular on the provisions of the Bill relating to the above matters, for we fully and entirely concur in opinion with the (most unfortunately for us zemindars) late Honourable Baboo Kristodas Pal, Rai Bahadoor, a Member of the Select Committee. That Honourable Member in his Dissent made the following observations :—

"The chapters relating to these subjects are doubtless in accordance with the modern ideas of land administration in periodically settled India, but as far as Bengal is concerned, the rights and interest of different parties are generally well defined, and where there might be disputes between landlords and tenants in matters dealt with in these chapters, common sense would suggest that the application of the law should be left to the self-interest of the parties concerned. But the essence of these chapters is that, while liberty is accorded to both landlord and tenant to move the machinery provided in them, the Local Government is empowered to bring of its own motion the machinery into action. The application of the provisions contained in these chapters will, I fear, plunge the country into a flood of litigation, stir up the worst passions of both the landlord and tenant, open a wide door to perjury and forgery, give rise to endless corruption among the subordinate *amlah*, and throw the agricultural population into a sea of trouble, expense, and loss. This was the lesson taught by the revenue survey. Of course, when the parties will themselves apply for the enforcement of the provisions under notice, it will be their own look out; but I do not see any good or valid reason why the Government should, without any application from the parties, step in and inflict upon

the country the evils pointed out above. The work contemplated cannot, I fear, be accomplished in two or three generations to come, and for all this time will run the festering sore indicated above. If the record of rights were confined to those cases in which auction purchasers at revenue or summary sales may not receive *jamabandi* papers for their guide, if the settlement of rents were made applicable to those cases in which the ryots might combine and withhold payment of rent, and agrarian outrages might take place, and if the record of proprietor's private lands were limited to those cases in which the proprietor himself made the application, in all these cases, on the application of parties, it would be reasonable and fair; but to give the wide scope which has been given in these chapters by vesting the Government with unlimited discretion is not only not warranted by the necessities of the case, but will be followed by evils which will be highly detrimental to the best interests, peace, and happiness of the agricultural population. As regards tables of rates, the enquiries which have been made on the subject have made it clear that in most parts of the country they are not practicable, that there are so many variations in rates of rents, sometimes one hundred and odd in a village, owing to various causes—historical, personal, economical, and social—that it is hopeless to discover any typical or uniform rate, or what was formerly called *pargana* rate, in any given area. And yet power is taken by the Local Government to order preparation of table of rates for special areas and to charge landlords and tenants with the cost of this work, though they may not in the least benefit by it. In the same way the expenses which may be incurred by enforcing the provisions relating to record of rights and settlement of rents, will be cast upon the landlords and tenants, though no application had been made by them. Thus a new cess will be imposed upon the land for purposes of proceedings which may do more harm than good to the landed classes.

"As regards the record of proprietor's private lands which go by the name of *khamar*, the definition given is wholly opposed to what is contained in the Permanent Settlement Regulations, and excludes all waste lands. Section 138 declares—

"'*Section* 138. (1).—The revenue officer shall record, as a proprietor's private land—

(*a*) "'Land which is proved to have been cultivated as *khamar*, *zirat*, *sir*, *nij*, *nij-jote* or *kamat* by the proprietor himself with his own stock, or by his own servants, or by hired labour for 12 continuous years immediately before the passing of the Act; and

(*b*) "'Cultivated land which is recognized by village custom as proprietor's *khamar*, *zirat*, *sir*, *nij*, *nij-jote* or *kamat*.

(2). "'In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom, and to the question whether the land was before the second day of March 1883 specially let as proprietor's private land; but shall presume that land is not a proprietor's private land until the contrary is shown.

(3.) "'If any question arises in a civil court as to whether land is or is not a proprietor's private land, the court shall have regard to the rules laid down in this section for the guidance of revenue officers.

"Section 37 of Regulation VIII of 1793, thus describes *khamar* lands:—

"'Section 37, Regulation VIII of 1793. The above exception (exclusion of *lakhiraj* lands from the general assessment), however, is not meant to include the *malikana* lands in Behar, or the *nankar*, *khamar*, *nij-jote*, and other private lands of the zemindars and independent talookdars, or other actual proprietors of land in Bengal and Midnapore, &c.

"It will be seen by comparing the language of the Regulation with that of the Bill that no such condition as cultivation for 12 continuous years was attached to the zemindar's *khamar* lands under the old law. As for waste lands, it is notorious that they were given to the zemindar to enable him to recoup the loss which inevitably fell upon him under the crushing assessment of the Permanent Settlement."

With regard to the expenses of preparing table of rates, &c., we deem it necessary and desirable to quote here a passage from the speech of Baboo Nandan Lall, a member of this Association. He said:—

"I most strongly object to any portion of the expenses to be incurred in the preparation of table of rates being saddled upon the zemindars. It is clear as daylight that the whole Bill has been conceived entirely in the interests of the ryot. If the Government is so kind to the ryots, and so anxious to ameliorate and improve their condition, it ought, in my opinion, to pay all the expenses to be incurred in the preparation of table of rates. There are two parties before us—one of them is the Government which, out of its boundless benevolence, desires to confer certain benefits upon the ryots at the expense of the zemindars; and the other is the ryots who are to be benefitted the most by this most wonderful piece of legislation. Such being the case, it is not, I believe, unreasonable to make the expenses payable wholly by the Government, the benefactor, or the ryots, the benefitted. Why shall any portion of the costs be charged against he zemindars who are the great losers in the whole bargain?

"Should unfortunately the Legislature turn a deaf ear to what I say, and allow the section to remain as it now is, then it is absolutely necessary that the proportion of the liability for these expenses of the zemindars and the ryots should be clearly specified in the law, and it should further be declared that the expenses will not be a joint and

several debt; for if they be a joint and several debt, we all know whom the Government officials will first of all pounce upon for the recovery of the whole amount of the debt. Such officials will not think of recovering anything from the ryots, considering the difficulties they shall have to struggle with in doing so. They will realise every pice from the zemindars, leaving them to recoup themselves from the ryots if they can; and I do not think I am at all exaggerating when I say that the zemindars will not succeed in recovering anything from the ryots."

We will conclude these notes with quoting here the opinion expressed in his dissent by the Hon'ble Maharajah Lutchmesshur Singh Bahadoor on the subject of distraint and realization of rents. That opinion harmonizes so fully and completely with our own that we have thought it better to copy it entire instead of expressing the same sentiments in our own language. This Hon'ble Member of the Select Committee says:—

"It has been admitted on all sides that the zemindars need some more speedy and certain means for realization of rent than they now enjoy, and that the present law is quite inoperative in those cases where all the tenants combine not to pay rents. Such a high authority as Sir James Caird recognizes the difficulties of the zemindars in those estates where the "no rent" cry is once raised, and even in the Bengal Government's memorandum of January last this difficulty is in a way admitted.

"We zemindars had therefore naturally hoped that, with this object, we would be given some increased facilities for realization of rent. In this, however, we have been greatly disappointed, and this Bill, if passed as it now stands, would leave us in this respect in a worse position than we now are, as instead of providing a summary and inexpensive method for the collection of our legal rents, it practically does away with distraint, the one only sure, equitable, and inexpensive process now allowed to us.

"The present law provides that in those cases where the ryots fall into arrears, the zemindar can by his own agency serve them with notices stating the particulars of their arrears and then at once distrain their crops. This is the only system possible in those parts of the country that lie on the frontier where a large portion of the tenants are not even British subjects, and therefore able to evade the jurisdiction of the British Civil Courts, and also in those vast tracts like the Cosi Dearah in the Purneah district which are inhabited by a semi-nomadic class of tenants who seldom stop in the same locality for more than one harvest.

"Even a day's delay in such cases is fatal. The crops, if the ryots refuse to pay their rent, must be distrained as soon as they are ripe, and the ryots should not have sufficient time to cut them without paying in their rents, as they leave the village for good directly they have gathered the harvest.

"The Bill, however, proposes that in the future the landlords must in every such case apply to the Civil Court, and that the crops should be only attached through that court, thereby giving to the ryot ample time to cut and carry off his crop before the court officers can reach the spot to distrain it. Such a procedure not only throws extra and new costs on the zemindar on account of court fees and legal agency which must be employed, but it will result in the landlord having no power whatever to realize his rents from those semi-nomadic ryots who leave the village directly after they have cut their crops. His only remedy will now lie in a civil suit against a ryot of whose whereabouts even he may be ignorant, and to execute a decree against whom, if he succeeds in obtaining one, will be almost impossible.

"I would specially record that it appears to me to be very strange that a Bill, one of the avowed objects of which was to give to landlords what is admittedly so necessary, viz. some increased facilities for the realization of their rents, should leave the hands of the Select Committee in such a form that instead of doing this, it intensifies their present difficulties, and deprives them of the little relief they now enjoy

"It is the proprietors who are responsible for payments of their share of the Government revenue, which they have to collect from their ryots, and it is not the Government revenue only that they have to realise; they have also of late been made to collect from their ryots their share of certain Government cesses, and if by the sunset of the day fixed for payment of the Government revenue they have not paid in their Government dues, they are liable to be summarily sold up and turned out of their properties, and yet they are not to be given any means by which they can ensure their ryots paying to them what they are bound under such a heavy penalty to pay in to the Government to a day.

"The practical working of the law, as it now stands, is this. that a proprietor may be sold up and ejected from his ancestral property owing to no fault of his own, but to his inability to recover his legal rents from his ryots, an inability due to a defect in our existing laws, a defect which, as I have above shown, the proposed Bill aggravates.

"I do not for a moment wish to dispute the justice or necessity of the law that makes it possible for large estates to be sold up for trifling arrears of Government revenue, but what I do wish to point out is that it seems to zemindars a want of justice on the part of Government to reserve to itself this power of summary sale, while it refuses any summary powers to the landlord for the collection of his rents from his ryots.

"The Government itself recognizes the inutility of trusting to the civil courts only for the realization of rents, by having peculiar laws of its own in its own estates or '*khas mehals*,' and if necessary for Government, surely such rules are equally so for us. I do most earnestly hope that this matter will be seriously looked into before any final conclusion on it is arrived at, as it is one which gravely affects the majority of the Behar zemindars."

To take leave of these notes, we must one and all frankly acknowledge "the debt immense of endless gratitude" which we, the zemindars of Behar, owe to His Highness Maharajah Lutchmesshur Singh Bahadoor of Durbhunga. To say the least, His Highness is a gem of wondrous beauty and incalculable value, which every Behar zemindar ought to wear, with pride and glory, in his head-dress. In this Tenancy Bill affair he has, in full appreciation of the importance of the questions which the Bill deals with, minded no personal inconvenience, trouble, and discomfort, and has constantly devoted all his time and attention to this momentous subject, in order to acquire a mastery of it, and be thus fully able to represent Behar in the Imperial Legislative Council. Merely by virtue of his position, as owner of a considerable large portion of the landed property in Behar, he has a thorough and sound knowledge and experience of the land system in the province; but not contented with this, he has, wholly disregarding all the heavy expense he thereby incurred, employed different agents in different parts of Behar, solely for the purpose of collecting all available information, to be better able to do justice to the great and important cause he has been called to represent. By the services he has done, he has, we make no doubt, greatly endeared himself to one and all of the zemindars of Behar, and we think we do not at all exaggerate when we say that it is our conviction that but for His Highness, Behar would not have been so ably represented in this all-important affair. May His Highness live long, and may heaven shower upon him the choicest blessings it has in store.

Note.—The Appendix A, hereinabove referred to, will be printed and forwarded as soon as the same is ready.

C. E. G.—Reg. No. 6657C—327—11-9-84.

Dated Furreedpore, the 22nd August 1884.

From—Baboo Ambica Charan Mazumdar, M.A., Secretary to the Furreedpore Peoples' Association,

To—The Secretary to the Government of Bengal, Legislative Department.

Now that a general discussion has been invited on the revised Bengal Tenancy Bill as published in the *Calcutta Gazette* of the 2nd April last, the Furreedpore Peoples' Association desire to offer a few observations on the subject. Their opinion on the Bill was invited by the Commissioner of the Division, but as owing to some untoward circumstances they have been unable to comply with that authority's request in due time, I am directed to submit, for the consideration of His Honor the Lieutenant-Governor, the following expression of their opinion on some of the provisions of the Bill.

2. The Association beg to be understood that they do not enter into the following discussion with any particular sympathy with either one of the two parties primarily interested in the subject—the actual proprietor, and the actual tenant On the contrary, they regard both of them to be important factors in an agricultural country like their own, neither of whom can be safely eliminated from the considerations of a paternal Government sitting to legislate for the peace and prosperity of its people. They believe the interests of both the classes to be co-extensive if not identical, and they are inclined to think that a correct and satisfactory solution of the problem, which has set this Bill on foot, lies only in the establishment of a harmonious relation between the two, and not in setting one against the other of these two contending parties. The Association are grieved to find that, although the Bill has undergone material alterations at the hands of the Select Committee, the main principles of the original Bill, which are so repugnant to the growth of that harmony, remain unchanged. Upon full consideration of the subject, they cannot divest themselves of the conviction that some of the provisions of the Bill are still so violent and revolutionary in their character, that, however much they may be now regarded in theory as conducive to the future welfare and prosperity of the tenantry, they will eventually prove destructive of even those rights which the latter had been slowly, but visibly and without opposition, acquiring under the least obtrusive of all laws—the law of the usages and customs of the country; and in submitting the following, the Association earnestly hope that Government will take the provisions of the Bill to which they refer into its serious consideration before passing them into law.

3. The provisions of the Bill to which they allude, and which appear to them open to serious objections, are the following:—

1*st.*—The unusual extension of the occupancy right of the settled ryot as given by section 25.

2*nd.*—The hard presumption for the first time sought to be raised in favour of occupancy right by clause (2) of section 26.

3*rd.*—Sub-letting of occupancy holdings.

4*th.*—Transferability of occupancy right and the imperfect restrictions proposed thereto.

5*th.*—Price-lists; and

6*th.*—The absence of adequate provision for the protection and better security of the tenants in their bastu or homestead lands not forming part of an occupancy holding.

4. (1) *Occupancy right*—The extension of occupancy right of the settled ryot over all lands included within a village or estate, as fixed and demarcated by the Survey authorities, seems to be open to twofold objections—(1). In Eastern Bengal, and especially in the districts of Furreedpore and Backergunge, almost every such village contains lands of three, four, and sometimes five or six estates, and almost every estate pervades through 10 to 50 survey kismats or villages. These estates mostly belong to distinct proprietors. Now, if the capacity of the settled ryot of a village to hold, on an occupancy title, land of which he has been let into possession, is to extend over such an entire village irrespective of the length of time for which, and the malik under whom, he may hold, it would be productive of the greatest injustice and hardship to many an innocent proprietor, and at the same time prove no less injurious to the tenant. For example, a certain village A contains lands of four different estates—B, C, D and E—belonging to four different proprietors; R is a cultivating tenant holding under B for more than 12 years in this village A. After the end of the 12th year R's demand for land increases with his improved condition or the increase of his family, but B, his landlord, has no lands to supply him, and consequently R applies to C, D and E, the other proprietors, who have lands of their estates in the same village, and takes from them three parcels of lands separately. The moment R is let into possession of these lands, he acquires a right of occupancy in them. Certainly there is no circumstance in the existing state of the country to justify the introduction of such a violent provision of the law. The example cited is neither an imaginary nor an unusual one. In the district of Furreedpore such cases are of the most frequent occurrence, and in the southern part of it the general practice. The consequence of such a violent change in the law will be that either many talukdars and petty zemindars will in total ignorance of the status of the resident ryots of their neighbouring proprietors let such ryots into possession of their lands as payekhast ryots, and afterwards, when a necessity will arise to provide for their own ryots, find themselves deprived of a valuable right, which deprivation they never calculated upon before, or, what is more

probable, the tenants will scarcely find for cultivation any land not belonging to their own landlords, and being thus compelled to depend solely upon what scanty provisions their own maliks can make for them within their own estates, the tenantry will gradually sink in poverty and distress. The payekhast system (by which is understood in this and some of the neighbouring districts cultivation by a tenant resident within the estate of another proprietor), which is widely in vogue in this and other districts in Lower Bengal, and which is eminently suited to the occasional requirements of the agricultural community, will be rapidly extinct, and the tenantry left in a condition of utter destitution. (2) There will be a further and greater evil arising from this provision. It is a common practice with tenants in almost all districts of Eastern Bengal to take several *mudaffats* at different times in the same village and within the same estate, and keep them as distinct and separate holdings. They themselves would be unwilling to have them consolidated into one holding, and in many rent-suits the only plea raised by the tenant is against attempted consolidations on the part of the landlord; for the advantages which the tenants derive from this separation are very great. In the event of a sale or ejectment for arrears of rent, they can easily afford to preserve some of them, although they would be quite unable to save all; and in case of their falling into adverse circumstances by deaths or otherwise, they cansurrender one or more of such *mudaffats* or holdings, and retain a number of them sufficient for their family requirements. The proposed rule of law, apparently giving them an extended right, would therefore virtually be ruinous to them. The hardship on the one hand, and the mischief on the other, that will certainly arise from an undue extension of this capacity of settled ryots in large estates extending over a large tract of country, or sometimes into more than one district, are easily deducible upon an application of the above process, and need not therefore be particularized.

5. Upon the above considerations, the Association would humbly suggest that in justice to the proprietors, and particularly in the interests of the ryots, section 25 of the Bill ought to receive the following amendment:—

Every settled ryot of a village or estate shall have a right of occupancy in all land held by him *under the same proprietor, and in one holding*, as a ryot in that village or estate.

6. The amendment proposed is italicised. It is perfectly true that if a ryot holding a quantity of lands for more than 12 years under one landlord, should afterwards happen to take from the same landlord an additional quantity of land in the same village or estate, and enjoy the two together, two characters ought never to be attached to different portions of the same holding so constituted. The proposed amendment will completely answer all these difficulties; for it will leave the tenant and the landlord free to choose with equal fairness whether lands subsequently demised should go to form an accretion to the original holding, and be subject to all the rights and liabilities incident thereto, or be treated as a distinct and separate tenure with somewhat diminished rights at the beginning, but with more extended advantages for all time. To guard against possible fraud and violence on the part of the proprietor, a clause may, however, be added to the section providing for a presumption in favour of the ryot, that in the absence of a written agreement all lands in the occupation of a settled ryot in one village or estate under one and the same proprietor shall be presumed to form one holding, unless the contrary is either admitted or otherwise satisfactorily proved.

7. (2). *Presumption of occupancy right.*—The presumption laid down in clause (2), section 26, will, it is seriously apprehended, operate most injuriously to the landlords. In the first place, it is much easier for the tenant to prove an affirmative than for the landlord to prove a negative. In the next place, the tenants have always better means to prove their 12 years' occupation than the landlords to disprove such a fact. Except where tenancies are created by written instruments (and such creations are very rare in Eastern Bengal), the only evidence which a landlord can produce to prove the actual commencement of a tenancy are the *jama-vassil-baki, karcha hishab*, and other collection papers of his own sherista. But these are very properly held to be no independent evidence under the law against the tenants. Besides, when a landlord will attempt to prove the commencement of a tenancy within 12 years by these papers of his own sherista, it will always be open to the tenant to say that earlier papers showing the prior existence of the tenancy have been wilfully kept back. But, on the other hand, receipts of rents granted by the landlords, which, if proved to be genuine, would be conclusive evidence against the latter, are always in the hands of the tenants, by which they can more easily and satisfactorily prove the duration of their tenancy. These practical considerations would lead the Association humbly to recommend that the presumption clause of section 26 may be entirely omitted.

8. (3.) *Sub-letting.*—It is now quite clear that the Government fully recognize the dangers which will inevitably result to the actual cultivator of the soil from a formal recognition by the Legislature of the power of sub-letting in occupancy ryots, but the remedy prescribed by putting certain restrictions (section 5 (4) (*b*) and section 37) to such power seems to be quite inadequate. The scheme proposed in sections 37 and 38 for discouraging money-lenders and speculators from purchasing occupancy holdings will hardly prove effective in averting the evils apprehended, and will moreover be unworkable under the existing machinery of administration. If an occupancy ryot can sub let up to a moiety of his holding, and yet retain the privilege of an occupancy ryot as regards enhancement of rent, what discouragement would it be to the money-lender and speculator to make purchases of occupancy holdings? If he is assured that his own rents will not be enhanced, except under conditions applicable to his transferor's case, and that he himself can realize from his under-tenants at a rate much higher than his own, any money-lender wishing to speculate on lands

will readily buy as many occupancy holdings as he can, and after keeping one-half of them in *khamar*, will sub-let the other half at exorbitant rents, and thereby seek to reimburse himself for what he has spent in making such purchases. It is exactly what the land-jobbers do in localities where transfers of occupancy rights are allowed either by custom or by the tacit consent of the proprietor, and they wish themselves no better, and the greatest number of oppressions are known to have arisen from such practices. Then the difficulty and inexpediency of going through an elaborate process of ascertaining the extent of a holding sub let in a simple rent suit, in which the nature of the tenancy of the lessor may have to be determined, may be easily conceived. Such a law will largely increase the labour of the courts, retard the progress of administration of justice, and doubly increase the expenses of litigation. The quantity of lands sub-let will have to be in most cases precisely determined after masurement by civil court amins, and it is not too much to apprehend that many of these parties, after a dozen of such rent-suits, will find themselves entirely ruined, while the actual cultivator of the evil will always groan under the heavy pressure of either of the superior combatants. A provision for equality between occupancy and non-occupancy rates of rent, together with a further provision for summarily dealing with the recovery of rents of occupancy tenants, sub-letting may no doubt prove a decided improvement; but even that will not prove a sufficient preventive remedy for the evils apprehended. This Association would therefore humbly suggest that, in attaching the incident of sub-letting in occupancy holdings, the law ought to provide that the holders thereof, upon sub-letting any portion of their holdings, will be converted into tenure-holders or middlemen; and the sub-lessees of such ryots shall not, unless they be actual cultivators, acquire right of occupancy in the lands so leased by them. The right of sub-letting herein proposed will no doubt be a restricted one; but if the evil of a rush of land-jobbers is an evil that ought to be avoided in legislating for the benefit of the true cultivator of the soil and improvement of the land, and if it be deemed necessary to provide also against the improvidence and indolence of an ignorant mass, an unrestricted power of sub-letting will be the greatest mischief that can be done to the Bengal ryots.

9. (4). *Transferability.*—The question of transferability of occupancy holding has undergone a most sifting examination from the time of the introduction of the original Bill. This Association will not therefore repeat the arguments already advanced on the subject. They would only observe that, in districts like Furreedpore, where there are large numbers of small estates with unusually long rolls of petty share holders, the right of pre-emption given by section 32 will rarely be available to the proprietors, and the occupancy holdings will largely fall into the hands of money-lenders. The fate of the *jotes*, *gantis*, *howlahs*, *mourasies*, and such other transferable tenures with right of occupancy, which were no doubt at one time merely occupancy tenures belonging to actual cultivators of the soil, and have now entirely fallen into the hands of money-lenders and speculators, does clearly indicate which way the new measure will tend. The positive evils that will arise from this provision are not far to seek. If a correct census could be taken of the civil and the criminal institutions arising out of questions between landlords and tenants, it would appear that by far the greatest oppressions on the latter have been committed by money-lenders and speculators. They oftentimes advance in accumulated principal, interest and costs of suits more than the ordinary value of the property secured for their debts, and being themselves obliged to purchase such property in auction, they become relentless in screwing the last farthing from the hands of the tenants for the realization of their outlay, It cannot be doubted that this accident of the occupancy holding will create a host of middlemen, whose multiplication is neither desired by the country nor intended by the Bill. Whatever penalties the zemindars may have incurred by their arbitrary and oppressive dealings with their tenants, surely they have not deserved a forfeiture of their proprietary right to be given away in perpetuity to an unborn generation of irresponsible middlemen.

10. (5.) *Price-lists.*—The scheme of preparing price-lists through the Collector every year for ascertaining the prevailing value of crops in any local area will, it is feared, be neither successful nor beneficial. Different prices prevail in different markets, and it will be hardly possible for the Collector to fix summarily a correct and fair standard for the same. The determination of the prevailing value of crops may be left to the courts' decisions upon evidence in each particular case.

11. (6.) *Bastu land.*—Some adequate provisions are required for the protection of all classes of ryots in the quiet enjoyment of their bastu or homestead lands not forming part of an occupancy holding. Their right in such lands ought, the Association think, to be heritable only. They should be provided with the same advantages and conditions as the occupancy ryot as regards enhancement and ejectment, but their interests in such lands ought never to be transferable.

12. In conclusion, the Association beg to observe that the provision of section 80, as regards *khamar land*, read with reference to section 53, leaves the status of *khamar lands* as known in Eastern Bengal open to misinterpretation. In Eastern Bengal lands let out in what is commonly known as *burga* are strictly recognized as *khamar* lands, and they ought never to come within the scope of section 53, which seems to have proper application in Behar only.

C. E. G.—Reg. No. 6104C 327—28 8-84.

Dated Cuttack, the 22nd September 1884.

From—Baboo Gourie Sunker Roy, Honorary Secretary, Orissa Association,
To—The Secretary to the Government of Bengal, General Department.

I am directed by the Orissa Association at Cuttack to submit for the kind consideration of the Government their own views and opinions embodied in the following paragraphs on the revised Tenancy Bill. This was originally proposed to have been submitted through the Commissioner along with his own report on the subject, but unavoidable circumstances, the Association regret, prevented it from adopting such a course. The opinions expressed below of the Association as regards the Bill refer mainly to its general principles and not to its details.

2. The Association recognises the necessity for amending the land law of Bengal and Behar with a view (1) to give increased facilities to the landlord for enhancement and easy realisation of arrears of rent, and (2) to give additional security to the actual cultivators of the soil, in the enjoyment of the fruits of their own labour.

3. In the opinion of the Association the land law both as regards Government estates and zemindari mehals should be assimilated, especially as regards enhancement and realisation of arrears of rent. It does not see why there should be separate laws for the Government estates and the zemindari mehals to meet the same end From an assimilation of this kind much good is expected, as it will have the beneficial effect of familiarising the local authorities with the real wants of both the rent-payers and rent-receivers.

4. The Association does not think it desirable to extend the proposed law to Orissa for the present at least, and is of opinion that if hereafter occasion arise for its extension in whole or part thereof, it should be done subject to legislative sanction. For they think it is unsafe to leave to the discretion of the executive Government extension of a law of such a paramount importance, involving the interest of the entire population of a province.

5. The whole of the province of Orissa is temporarily settled: and the next settlement is to come on within a few years hence. It is not therefore in the opinion of the Association desirable to make any change in the existing law of the country until that period.

6. The land tenures of Orissa differ materially from those of Bengal and Behar: so much so that many of the provisions of the law under review, which can so well apply to the latter, may be deemed quite inapplicable to Orissa at present. The Association, however, thinks that if necessity arises hereafter for the introduction of any of the sections of the law into Orissa, they might be introduced under legislative sanction

7. Taking into consideration the chapter II with section 37, the Association deprecates the provisions made in the Bill for increasing the already too numerous classes of tenure-holders who are said to be the most rack-renting of all the landlords existing, and thinks that every effort should be made to diminish rather than increase their number. But what the Association is most afraid of is that if the Bill be passed into law, it may have a disastrous effect on the peasantry. The Association thinks that the conversion of occupancy rights into tenures under any circumstances will not deter mahajuns from purchasing their rights.

8. Registration under section 15 should be made compulsory either by providing a penalty for non-registration within a specified space of time or declaring the transfer invalid if not registered within that time

9. The Association consider chapter IV as unnecessary. In all matters, except as to enhancement of rent, ryots with fixed rent should be treated as ryots with rights of occupancy.

10 The Association deprecates the provisions laid down in sections 25 and 26, which give to the settled ryot the right of occupancy, even in land situated within the village or estate belonging to petty jaghirdars and other free-holders, if he is but allowed to cultivate it for a single season.

11. Sections 28 and 29 provide that if one or more of the several joint-proprietors or tenureholders acquire the right of occupancy of a ryot, each of them will retain it Even a neighbouring zemindar or a mahajun is allowed to retain that right should he acquire it by purchase or otherwise. But it is only in the case of the landlord acquiring the same by purchase that the occupancy right shall cease to exist. The distinction is invidious and unnecessarily harsh. The Association proposes that either the two sections referred to above be altogether omitted, or that a provision be made to the effect that if the purchaser of an occupancy right lets out the whole or a part thereof, the right of occupancy shall cease to exist with respect to that portion. The Association prefer the latter course, as it thinks that every endeavour ought to be made to give fixity of tenure to the actual cultivator.

12. Referring to section 31 the Association is of opinion that the right of succession should only be transferred to the lineal descendants of the deceased or other member of his family living jointly with him. The Association would altogether omit the right of transfer, or give it only under this condition, that the inheritor would retain that right if he cultivates the land himself But if he lets it to a third party the right will be transferred to him, *i.e.* to the actual cultivator.

13. As regards the right of pre-emption it appears to the Association that, under the Bill as it stands, the landlord, if he purchases occupancy right, will, in the majority of cases, purchase a bag of wind. But if the suggestion of the Association as to the transfer of the right to actual cultivators be adopted, there will be no ground for complaint.

14 The Association deprecates all restrictions put by section 41 and other provisions of the Bill under free contract, and does not understand why, when a court of law can enhance rent by 25 or 50 per cent, the parties cannot between themselves agree for the payment of more than 12½ per cent

15. The Association recommends to take away the restriction put in section 46 (*a*), and regrets to find that the Bill as a whole has a tendency to increase litigation and to discourage the existence of any sympathy between the landlord and the tenant.

16 The use of the words "staple food crops" in section 50 will, the Association apprehends, be productive of great hardship. It does not see why no account should be taken of more valuable crops, such as indigo, tobacco, oilseeds, cotton, &c.

17. Commutation under section 53 ought not to be allowed except with the consent of the landlord

18 The compulsory registrations under section 57 would, in the opinion of the Association, be vexatious, and should therefore be omitted.

19. Section 62, the Association thinks, will encourage subletting, which may temporarily be allowed under the exceptional circumstances contemplated in section 37 (*a*), but in all other cases the law ought to distinctly provide that the lessor cannot receive from the lessee more rent than what he himself pays

20. The Association approves of the proposition made in sections 70 to 72, regarding the grant of receipts and accounts. But the forms appended are such as it would almost be impossible for the landlord to grant receipts regularly, if, as the Association understands, he has to state in each separate receipt for each payment the particulars of the holding and of all previous payments.

21. The Association does not think that the provisions for distraint made in chapter XIII are necessary. The present law should be allowed to stand.

22 The law should make some provision to facilitate the landlord using lands held by ryots for making tanks, embankments or other improvement of the estate.

23. For the realisation of arrears of rent the Patni Sale Law should be adopted in the case of tenures and other transferable holdings.

24. In the case of non-transferable holdings, provision should be made to the effect that when the landlord files a plaint stating the amount of arrear for full one year or more, a notice should be given to the ryot to pay up the arrears or dispute the zemindar's claim within a month from the date of receipt of notice, and if he does not he should be considered to have forfeited all his claims to the possession of the land If he does not pay or dispute the zemindar's claim within that period, or in case of dispute he does not pay the amount the court may decree within one month from the date of the decree, he should, on the zemindar's application, be ejected, and his property sold for the amount decreed, provision being at the same time made against fraud on the part of the landlord.

J E. S.—Reg. No. 7401C—327—29-9-84

To—The Hon'ble Rivers Thompson, Lieutenant-Governor of Bengal.

Your Honor—

The Government of India, by their letter, from Simla, dated 5th May 1884, from the Secretary, Legislative Department, to the Government of Bengal, desires the further consideration of the Government of Bengal on the Report of the Select Committee on the Bengal Tenancy Bill.

We, the ryots of India, beg that your Honor will, at the same time, as before, take into consideration, and give some answer to the various petitions of us ryots of India "to the Government of Bengal," to the "Government of India," and to the Secretary of State for India. The zemindars have had the honour of an answer to their petition: up to the present time none of the Indian newspapers, not even the *Englishman*, the organ of the zemindars, have been able to controvert our position—our rights to non-enhancement of the rates of rent or revenue fixed by Government in 1790 and confirmed in 1793

The ryots assisted to form these rates in conjunction with the zemindars, and that of non-ejectment so long as the ryots pay the fixed demands of Government as above in 1790—1793.

Nor have either of the Governments of India honoured the ryots of India with any answer, consequently we are constrained to believe that our above-stated rights are unassailable.

Your Honor, Warren Hastings pronounced the enhancement of rent by the zemindars to be extortion and robbery: he also provided severe punishment against it, though it benefited Government, for at that time the whole of the collections were poured into the treasury.

The Marquis Cornwallis, after the Act of Parliament in 1784, in 1790—1793, an interval of twenty years, thoroughly denounced it as making slaves of the people, and confirmed Warren Hastings' decision that it was robbery and extortion, and re-enacted its punishment. If it was robbery and extortion in 1772 and in 1793; it is also robbery and extortion in 1884.

That the zemindars have broken their kabuliyats and taken more than is authorized by law from the ryots has been brought by various Collectors to the notice of the Government, we may say, every decade; but the most extraordinary part of the zemindars' petition is their saying that the Government sanctioned by not punishing them according to law: in other words, that the Government are *particeps criminis* in this robbery and extortion from the ryots for a period of sixty years, and therefore robbery and extortion is their right by custom.

Your Honor, we do not think that the zemindars can prove this, and that we shall, from the Regulations and Acts of Government, do our best to prove the opposite. That from 1760 to 1859 the Government did not sanction enhancement of rent upon the ryot, more especially an enhancement not decreed by the Courts of Law. In 1859 new ideas came in with the petition of the eastern zemindars, when Act X of 1859 was enacted, but so clumsy that it has now become a dead letter, having ostensibly been passed in favour of the ryots, but by the opposite reading ruining them.

We, the ryots of India, have never been recusant like the zemindars, who have often refused to pay the Government demand. We have always paid the Government demand, furnished russud, carts, firewood, &c, although we have not been paid for it; the zemindars seizing the money and getting the credit really due to us. Whatever improvement in the country, embankments, roads, drains, &c., have always been made by us, and even now we pay for it by the Road Cess Act. In all things we have, as a rule, proved docile and humble, and the first battles fought by the late Hon'ble East India Company we assisted side by side with the English soldiers, neither the zemindars nor the present race of sepoys assisting: in fact, they were fighting against the English: therefore, we pray to be graciously heard as follows:—

Battle of Plassey, in which some of our ancestors fought on the side of the English.

1769	Not increase of rents, and to secure the ryot from all further invasion of his property.
1776.	The permanent and undisputed possession of their lands and payment not more than the pergunnah nirick.
1776 to 1790.	Zemindars were yearly tenants-at-will of the Government.
1786. (Ryots).	The secure enjoyment of the fruits of their industry—Mr. Shore's minute—by the terms of their leases. No enhancement of rent.

Petition of zemindars to Parliament on their proprietary right not confirmed by the facts discovered by the Select Committee, 1787. Also, again, not confirmed by the Decennial Settlement of Lord Cornwallis, 1790, when formal *leases* were given, and then counter-kabuliyats signed by the zemindar agreeing to non-enhancement of rent and non-ejectment so long as the ryots paid the Government demand.

1784. 1787. 1790.

Regulations for the Decennial Settlement confirmed, called the Permanent Settlement; neither enhancement nor ejectment in either of these or the subsequent Regulations—No. 54, Bengal Resolution, section 28.

1793

1790.

Permanent ease and security of the ryot, in conjunction with the zemindar, to fix *his own* rents, abwabs, and kurcha; fine on zemindar if in this settlement the abwab and kurcha were increased.

To secure to the great body of the ryots the same equity and certainty as to the amount of their rents, and the same undisturbed enjoyments in the fruits of their labours, which we mean *to give* to the zemindars themselves; showing that they had it not.

1792.

Passed for the future ease and happiness of the people, not for the zemindar, who are only congratulated on being hereditary tax-gatherers; lands given only to them in trust, same as before the possession of the country came under the British rule, and in the time of the Mahomedans; confirming the Decennial Regulations, and pottah and kabuliyat of zemindars, the settlement of the land law carried out to this day; instance chur land at Sulkea, new pottah for accretion given out in 1877 and kabuliyat signed in that year, same as 1793. If the Government sanctioned the indiscriminate raising of rent, then why give this pottah and receive this kabuliyat with ryots' names also written in. By the above pottah and kabuliyat the petition of zemindars in 1784 is *refused to this day*.

Regulation 1 to 48.

1793

44 of 1793.

1877.

No enhancement nor ejectment mentioned; zemindar non-suited if he has given no pottah to ryot; also fines on the zemindars for taking more rent, kurcha, or abwabs.

Regulation 8 of 1793.

Land and houses declared to be the real property of the ryot. No law being passed up, nor can be to the time abrogating the above.

Regulation 17 of 1793.

Confirming the same rates for waste land as the old uzlee land, not a word of higher rates or enhancement Confirming the Regulations of the Decennial Settlement: these Decennial Regulations should be placed before the public in full.

Regulation 44 of 1793.

"Enacted to put an end to all misconstruction of the previous Regulations forbidding enhancement and ejectment, and continuing the terms and rates for ever, so long as the ryot paid the pergunnah nirick.

Regulation 4 of 1794.

1808.

Madras and Benares Permanent Settlement.

Mr. Dodgson, the member for Madras, reiterating the above non-enhancement and non-ejectment for all ryots from Cape Commorin to the most northern parts of India, not impugned by Governor-General nor Court of Directors.

1811.

Report of Select Committee, House of Commons, completely against the zemindars and their petition of 1784 Regulation 5 of 1882.

1812.

Where no pergunnah rate of 1793 has been fixed, then authorizing the prevailing rate of neighbouring pergunnahs re-enacted in Act X of 1859, so no enhancement in that year and since for the prevailing rate bowls over every new attempted rate.

1819.

Judgment—*vide* Marshman's Civil Guide, confirming ryots in the possession of their lands so long as they pay the pergunnah nirick of 1793.

1816.

Memorandum of Lord Hastings.

Letters of the Court of Directors, correcting the erroneous notions of the Judges, acknowledge permanent settlement of ryots, non-enhancement and non-ejectment.

1819 to 1825.

1815.

Memorandum of Earl Moira.

The expediency of maintaining the tenures of the ryots. His Lordship in Council considers it the bounden duty of Government to maintain.

1822

Holt Mackenzie, the zemindar, who is neither an agriculturist nor owner of the soil.

1832

1817.

Memorandum of Mr. Canning.

None but the rates recorded in Government jummabundee to be the rules for regulating the rent, even on appeal.

Regulation 7 of 1822.

Rules for chur land no rates higher than parent tenure.

Regulation XI of 1825.

Letter of Court of Directors directing assessment, but silent on enhancement and ejectment.

1830.

Circular order authorising a zemindar to take more than the pergunnah rate only when agreed to by ryot. It is impossible to protect a fool.

1831.

A circular order of Revenue Board has not the full force of an Act or Regulation, but it refutes the idea that the Government could ever so have acted against the law as to silently sanction the robbery

1831.

and extortion by the zemindar. It cannot affect the prevailing rate, as it does not affect the ryot's neighbour: in any year the ryot can withdraw his assent. The ryot can at any time revert back to the prevailing rate of the pergunnah in 1793 by Regulation V of 1812.

1833. Memorandum of Lord William Bentinck.

Answer of Government to Landholders' Society acknowledging that ryots settled after 1793 had khudkhast kudemi rights in consultation on the draft of Act XII of 1841.

1841.

Sir J. P. Grant:—"The right to enhance according to the present value of land differs not in principle from absolute amendment of the tenure"

1840. Sir J. P. Grant's opinion on the rights of the ryot as proprietor of the soil are too well-known. Circular order.—If zemindar refuses to give a pottah to the ryot, the ryot was authorized to take a copy on stamped paper of that page of the Government jummabundee in which his land is mentioned, and that was authorised to be his pottah.

Act XXXI of 1858 Revenue settlement officer *only* to fix the rates of alluvial soil.

Eastern zemindars in their petition acknowledge that they have no right by law to enhance the rates of rent of the ryots, but petition to have it The outcome of this was Act X of 1859.

1858.

1858. Mr. Sconce's memorandum.

Collectors of every decade informed the Government of the malpractices of the zemindars, but by reason of no public prosecution failed to bring them to justice.

In no way have the Government at any time authorized the raising of the rent privately by the zemindars before Act X of 1859 was passed, and it is only by Act X of 1859 that it was attempted to be done by Courts of Law. Both Sir Cecil Beadon and Sir William Grey acknowledged that Act X of 1859 was an infringement on the previous laws protecting the ryots from enhancement of rates of rent and ejectment, and to substantiate this we have the petition of the eastern zemindars in 1858. This Act X of 1859 violates No. 54, section 28, Resolution on the Bengal settlement, freedom of contract of the ryot. Lastly, we have the answer of the Government of India against the memorial of the Landholders' Association to Her Majesty's Secretary of State for India, dated 12th February 1884:—"We will not repeat the evidence which has convinced us and *former Indian Governments*" that the acts of the zemindars have not invariably been the measure of their rights, and that illegal cesses and abwabs presuppose the existence of established rates of rent."

Here we have former Indian Governments not agreeing nor condoning the illegal oppressive acts of the zemindars. Therefore, it cannot be said to be a legally established custom of the country. The former Indian Governments have only followed in the footsteps of the Marquis Cornwallis, who pronounced it a *violation* of the established laws of this country. We trust we have shown that the zemindars' assumption of condonation of the robbery and extortion from the ryot is a might and not borne out by any acts of former Indian Governments.

Your Honor, the whole dispute between the zemindar and ryot is the wish-for-to-be-believed-idea that the Dosala rates are unknown. Therefore, the zemindars ask for enhancement of rates of rent. These rates are well-known; not forgotten throughout Bengal and Behar. We have the evidence of Mr. Collector D'Oyly to that effect, and we pray that a Committee be appointed to take evidence thereof, and of which Committee Mr. D'Oyly be made President.

The zemindars have desired to be heard at the Legislative Council Board. We ryots also kindly crave the privilege by counsel, and are willing to abide the result.—"God defend the right."

As we ryots are very, very poor, we beg that the Government will graciously and substantially reward the winning Barrister.

We have the honour to be
Your Honor's most obedient servants,
JOHN STALKARTT, *for the "Ryots of India."*

The 2nd June 1884.

W. J.—Reg. No. 6198C- 331—1-9-84.

To the Hon'ble Rivers Thompson, Lieutenant-Governor of Bengal.

Your Honor—

Having perused your Honor's instructions to the Commissioners of Divisions, we note that there are many clauses pointed out as dangerous to the rights and liberty of the ryot, rights acquired before under the permanent settlement of 1793 and since. Therefore your Honor desires that the Bengal officials will give all these points their further attention and discussion, so as to eliminate them from the Bill, andrenew the guaranteed protection from time immemorial to the ryots with a right and workable effect.

In furtherance of these good wishes expressed by your Honor for the welfare of the ryot, we beg in this letter to point out where the intended Bill presses hard upon the ryots.

In the first place, we beg to bring to your Honor's notice that there is no adequate protection for ryots entitled to fixed rates of rent from being harassed yearly, or every ten or fifteen years, from attempts by lawsuits to dispossess them, or to raise the rents or revenue payable by them. Ryots that are entitled to fixed rates of rent—from sixty to ninety per cent. of the agricultural population—are as well known to the zemindars as to the ryots themselves, and there is not the least reason that every ryot entitled to hold at fixed rates should be at the mercy of the zemindar for a lawsuit when it pleases him. We believe that we have at hand a clause that, if inserted, would protect the ryot, viz. "that every zemindar or his substitute so suing a ryot entitled to fixed rates of rent for every such offence should be fined one thousand rupees; a great many such suits, say 20, would subject him to be removed; and every Judge or Subordinate Judge hesitating to institute such fine should be summarily dismissed from the Government service."

The above may appear a Draconic law, but great crimes require severe measures for their repression, and the same idea, though couched in different words, was the rule of 1772 and 1793. We have good grounds for desiring this repression of crime to be reproduced in 1884, and will lay before your Honor the litigation that has been through 30 years, and for only a small plot of land from 13 to 40 Bengal bighas, over which sums of money by lawsuits, sums not recoverable, have legitimately been expended, approaching near Rs. 10,000 (a like suit to this was borne by Messrs. Burn and Company, who eventually threw up their land). We, Messrs. Stalkartt, ryots of Ghoosery, Sulkea, are in possession of upper and chur land for over a century, a little time longer than Sheik Rutton Bepari; the upper land held under mourusee mokurreree potta at fixed rates, of course could not be touched, nor can the chur, as it is protected by Regulation XI of 1825. The zemindars knowing the above well, having skilful lawyers, have tried to dispossess them by law, and to enhance the rates of rent of the chur. They cannot be said to be ignorant of the status of Messrs. Stalkartt as ryots of the première class, consequently their proceeding must have been carried on with a dishonourable intent. We will give a short history of the churs round about Calcutta. Regulation XI of 1825 being passed, the churs were leased out at Rs. 5-5-4, according to Regulation VII of 1822, the rate to be paid by the ryot. At the end of five years, Government attempted to raise the rent to Rs. 20, but after some litigation, the zemindars as well as ryots protesting, it was reduced to its original rate Rs. 5-5-4 in a very able decision by Mr. Thomas Reed Davidson, Commissioner, Jessore, 12th March 1845. The zemindars tried to dispossess Messrs. Stalkartt by giving the land against the law for chur land, Regulation XI of 1825, to one Amecroodeen Moonshee in 1849. The High Court retained Messrs. Stalkartt in the possession of their land, 1851. Since then the zemindars have been trying—two five-anna and one six-anna zemindar—to raise the rent (by many lawsuits) of this chur land, consequently harassing the ryot against the tenor of the zemindar's kabuliyat to Government—

1st.—By lawsuits before 1859, trying to enhance the rates (the ten-anna zemindar).

2nd.—After 1859 the six-anna tried on all the points of Act X of 1859.

3rd.—Five-anna zemindar thrown out on its being declared in a Municipality.

4th.—Six-anna sued on any or no plea, not even stating equity and good conscience, nor quoting any law in 1879. In 1884 it was ruled that the land came under Regulation XI of 1825, and the same rate settled Rs. 5-5-4, the same as in 1845, by Mr. Thomas Reed Davidson, Commissioner; therefore *res judicata*, on the ground *res judicata*, on all the grounds of Act X of 1859, *res judicata*, the ground of a Municipality.

The last decision of 1884 had to go through four courts, and the costs incurred not permitted by the court over Rs. 2,000, paid by the ryot for being permitted to pay the same rate Rs. 5-5-4 per bigha as decreed by Mr. Thomas Reed Davidson, Commissioner, 1845, just 39 years ago; and the Messrs. Stalkartt are condemned to pay costs to the zemindar Rs. 28, and to receive from him Rs. 132, costs for the decree of Rs. 46, their own legitimate cost Rs. 2,000, less Rs. 104=Rs. 1,896 dead loss.

This suit was only for Rs. 75 per bigha; the previous ones were for Rs. 200 per bigha. This might fairly be called keeping the ryot, according to the late Hon'ble East India Company; "in the permanent and undisturbed possession of his property," 1787 A.D. This is not all; the zemindar having lost the suit in the lower courts has the privilege of taking the suit to the High Court, and the Messrs. Stalkartt will have the extreme privilege of

paying some more costs, about Rs. 600, which the court will not allow, all for the privilege of paying, as we did before, the large sum of Rs. 46.

In the above calculation the cost and loss of time, travelling, neglect of one's usual business of over four years, four suits before three separate Judges, is not taken into calculation. Could any ordinary ryot have had any chance of being successful, more especially as he could not have paid a tythe of the expenses not recoverable by law. Where are "the secure fruits of our industry" promised to us in 1769, 1776, 1786, 1792, and our "future ease and happiness" in 1793; so that all lawsuits should be eliminated from the Bill. We next come to ryots of occupancy at unfixed rates; this is a misnomer, for all ryots paying the annual demand by Government, not of the zemindars, were by Mr. Grant, Sheristadar to Government in 1787, entitled to occupancy tenure. It is the desire of the new Bill to make the occupancy ryot pay more rent or revenue than the ryot at fixed rates, therefore in the race of life he is more heavily handicapped than the ryot at fixed rates, and the second occupancy ryot or tenant-at-will still more so, for he is literally at the mercy of the zemindar—men who up to this day are not remarkable for good faith or any of the qualities which the Marquis of Cornwallis believed were inbred in them, and which the permanent settlement would bring forth. The Marquis of Cornwallis permitted no tenants-at-will. The permanent settlement was made to firmly attach the ryots to a village, for they had on account of the oppression of the zemindars taken to a roving life, ploughing here and there, and when pressed for more rent flitting to some other zemindari. Having thus far stated their rights to the permanent settlement, we will now turn our attention to the sliding scale of the Select Committee.

This attempt at raising the rates of rent of the ryot, called occupancy ryot, by the Select Committee on the Bengal Tenancy Bill, is a more strange anomaly than all the phases of the Ilbert Bill.

The raising of the rates of revenue for whom? Not for the public good, railways, canals, Government officials, &c., but for the private benefit of a class who are tax-gathers, and to whom higher rates of revenue than those of 1793 do not belong, acknowledged in this Bill for ryots at fixed rates, that is, for all ryots, there being no distinction of classes in Regulation VIII of 1793 (the law of Settlement).

Let us consider the position of Government: the acumen and knowledge and time of the Legislature are employed to frame traps to catch the unwary poor ryot, and force him to pay more money than he agreed to pay in 1793; *the right is in the man, not in the land*, for no benefit to the nation, and therefore the Legislature should not be employed for the benefit of the few rich to make them richer, at the expense of the many poor to make them poorer.

It is a species of unheard-of thoughtlessness, if not wickedness, not to be found in the present annals of any other nati n. Your Honor will, we hope, excuse such free language, for our time is limited to the 14th August 1884. We trust that we shall be able to vindicate our strong language by our critique on the *a, b, c, d* sliding scale for enhancement of rates of rent in the Report of the Select Committee lately submitted to your Honor; any such conduct of the Legislature towards any other private enterprise would be thoroughly denounced throughout the world. The zemindars were before 1793 official Government servants collecting the revenue. In 1790—1793 they descended into private life, and are not entitled to any more than their contract as brokers or commission agents for collecting the revenue; they are paid 10 per cent, but we ryots have, by the Decennial Regulations, the right to ask the Government to change oppressive zemindars or tax-gatherers.

Apologising for the above forcible language, we now shall attempt the analization of the sliding scale *a, b, c, d*; we prefer to come on the last clause *d* before the others, "that fluvial action has increased the productive powers of the land." This is a difficult question for the zemindars to prove; the mere fact that there is an inundation fluvial action is no settlement of the question. We must wait till the crop of next year is reaped and compared with the returns of former years before any decision can be arrived at.

The alluvial mud of the Hooghly is no better now than in the time of Moses, 3,000 years ago, and even should it have given greater results than last year, the only fact that we can arrive at is that the continual cropping has impoverished the soil, and it is now restored to its former state, when the ryot agreed to pay a certain rate for the land if it continued in that state; if overwhelmed by sand he would certainly throw it up, and the new law would force him to pay enhancement for fifteen years.

An inundation fluvial action does not aways bring down beautiful alluvial soil; it very often brings with it so much sand that any improvement is more than exhausted in the first year, and afterwards it is barren, and to puzzle the Judge on infinity of changes can be rung between soil of 1st quality and sand,

ditto	2nd	ditto,
ditto	3rd	ditto.

The Culna indigo factory, in the district of Burdwan, was shut up for the reason that too much sand was deposited in the first place, and in the second place the land became so high that not every inundation could overflow the land, it was only a *very* high innundation, which did not take place every year; so that the lands in a very short time were *exhausted*, and the factory in consequence was shut up. The same thing took place in Tirhoot; sugarcane being sown, arrested so much sand that the lands were useless for any crop. How is the ryot to recoup himself for the losses by inundation fluvial action? Will the zemindar pay him for his losses, as he has to receive higher in advance rates of rent? Rent paid in

advance of crop. Besides the loss sustained by the ryot, he is to pay rent in advance for the next year's crop. Numerous lawsuits would crop up every year, for lands liable to inundation or fluvial action are so every year. The deposit requires yearly inspection and litigation fresh every year.

The ryot by the new law is to pay his rent in advance. Inundation usually takes place in August and September, so that, when it has occurred, the ryot has paid three kists, and so loses three-quarters of the yearly rental, which by the old law he would not have paid—no crop, no rent; besides losing his crop, most likely his house would be damaged, which he would have to repair, also the bunds of the field next year. From no crops no receipts, he would have to pay the zemindar for the new year his rent at an enhanced rate still in advance, and if he could not, he would be charged interest.

Number of officials have seen the country covered for miles with water, the wretched ryot perched on the roof of his house, because the water was also inside, the house *ruined*, and this man is to pay higher rent next year, and for fifteen years more at enhanced rates.

Supposing no fluvial action inundation takes place for four years, if he had not paid his rent in advance, this little amount of money so saved would perhaps have enabled him to recoup himself. In the fifth year comes another inundation fluvial action which brings him back again to poverty.

When inundation fluvial action took place, it was a good zemindar's cry to go up to Government for remission of rent, but the cry against the ryot is to make him pay more. Government usually remitted the rent, and *never* asked the zemindar to pay higher rent for the next and succeeding years; it was looked upon as a great calamity, and any such demand would be adding insult to injury.

Is the zemindar to refund the rent of the year of inundation with interest?

Our attention will now be given to *(c)*, "that the productive powers of the land held by the ryot have been increased by an improvement effected by or at the expense of the landlord" (zemindars). The framers of this clause ought to have had a little more agricultural knowledge. What are the productive powers of the land? The productive powers of the land are not produce. The productive powers of the land may be great, but that is no reason that the produce must be great. It is only by the culture of man (ryot) that the productive powers can be developed. This evidently is the ryot's business, not the zemindars. The productive powers are known only to and made by God, so cannot be increased by any action of the zemindar; it is morally impossible. All means that can increase the crop, such as manuring, draining, ploughing, weeding, sowing, are the province of the ryot, and if the zemindar were to interfere and do these himself for a year only, that he might go into court and so attempt to raise the rent, the ryot would be justified in turning him off the land. In former times the making of the road or a railroad was said to increase the crop, but even that stupid plea is taken away, for there is now a Road Cess Act, so that the ryot now pays for all possible improvements as he did before in the olden times. But what we do learn from this is the reverse of the clause that if the zemindar has made no improvement, then he is not to have any enhancement.

By this reading the zemindar is shut out from scale *(b)*, any advantages accruing from the rise of prices, and *(d)* the miscalled benefits accruing from inundation, less the loss to the ryot of that year's crop and rent.

We next come to *(b)*, "that there has been a rise in the average of staple food-crops in the locality or at the usual markets;" but it does not say that this rise has been effected by or at the expense of the zemindar. *(c)* infers that if this improvement is not made by the zemindar he is not to have it. Supposing now that this rise is made by the ryots withholding their crops from market, and being in want of money borrowed for their requirements, paying interest thereon (this is now very often done), then the zemindar is to get the benefit of action solely that of the ryots. No reliable statistics of the price obtained by the ryot for fifteen years' back, more particularly by averages, so that the whole of this clause is unworkable.

The intrinsic value of the crop, whether round, well filled up grain (colour, &c., not being recorded, as Englishmen record a tea crop or indigo crop totally distinct from a market demand) would prevent an average public price being defined for years past. In estimating crops there are two points to be considered—first, quality of crop, and second, state of market.

How are the prices of staple crop to be discovered? Take rice for instance. The ryot cannot sell rice to his neighbour, for his neighbour has plenty of it, so he is forced to sell it to his mahajuns. There is no collection of people that one can call it a market; the mahajuns are scattered here and there in the interior of the country, as it suits their interests. The real market for rice is only in Calcutta, and it has passed through more hands than one before it reaches the Calcutta market, which is excluded by the law. The Inspector of Prices will have to travel miles to inspect mahajuns' books; when placed before him can be read readily the characters of these accounts in Bengali, Nagri, &c.; therefore it will be necessary to attach to this office an interpreter, &c. The inspection of mahajuns' books is a very long affair. Any official who has had to do this in court will know of this difficulty. To get any average to do justice to the ryot, a great many books will have to be inspected, and as some keep two sets of accounts, each one will have to be sworn, &c., and the time to do this will be immense. Before one-half are examined it will be necessary to examine them again, once in the dearest time of the year, and once in the cheapest time; so that it would evidently fall into the hands of the amla

of the court, who are at the command of the zemindars, the ryots can put no trust in them. Look at the attempt to boycott the most important documents in the suit of the zemindar *versus* Messrs. Stalkartt, in which one of the native Judges, the amla of the Court, the opposing native barrister, were all implicated. This is not all; the English Judge gave a decree and the amla of the court had to bring it into practice, that is, to define the exact amount in rupees which were due. What occurred; it was only the six-anna zemindar that sued, the amla gave to the six-anna zemindar not only his own share, but the share of the other two five-anna zemindars, and the costs of only one court, whereas it had gone through four courts, therefore four sets of costs should have been calculated. This was brought to the Judge in Bengali, who having faith in his amla signed, and now there must be another petition to the Judge to correct it. If it had been an ordinary ryot, he would have been sold up on the spot. The zemindars as a rule merely require a decree for one bigha for land in the interior, and on the strength of it seize ten acres even of other ryots not parties to the suit. As before, he merely wanted his master's badge, a plea only, not a rupee's wages, not a right, and he can then earn his own livelihood. No wonder that after 20 years of Act X of 1859 the official sent in quest of the prevailing rate could not find it, and asked for a prevailing rate did not know that he had to discover it by calculation from the ryots' receipts. Respecting the costliness of suits to the poor ryot, which your Honor desires to guard against in the new Bill, we have only to bring to your Honor's notice the Government statistics that a very large number of the ryots of Bengal are very poor, and plough such a small amount of bighas that they cannot afford the luxury of a lawsuit, the only panacea that the Government can offer to the poor ryot for all the ills of life before Judges who believe that it is the desire of the Government to enhance the rates of rent at all *costs to the ryots*; the word enhancement is always cropping up, but the word reduction seldom or never. Perhaps it would be agreeable to the Legislature that the zemindar should pay all the costs of enhancing the rates of rent, the ryots as well as his own, not merely court costs, but actual costs.

We have the honour to be,

Your Honor's most obedient humble servants,

JOHN STALKARTT,

The 16th June 1884. *for the Ryots of India.*

C. E. G.—Reg. No. 6190C—331—1-9-84.

To His Honor the Hon'ble Rivers Thompson, Lieutenant-Governor of Bengal.

Your Honor—

We have a few words more to say respecting fluvial action; perhaps it is intended for alluvion. Now accretions by alluvion are not the province of Act X of 1859: there are separate laws peculiar to this description of land—Regulation XI of 1825, and Act XXXI of 1858. The principles of these Acts are condensed as follows:—Before the zemindar can levy any rent from the ryot, arrangements should be made by Government, *firstly*, for the amount of rent to be paid by the ryot; *secondly*, the percentage thereon allowed to the zemindar for expenses; *thirdly*, the amount of the zemindar's commission agency charges. It appears to us that the Government, in this new Tenancy Bill, do not desire to go backwards behind Act X of 1859, but in this question, as Act X of 1859 is shelved, it cannot be a bar to our ancient rights, which we ryots have not forfeited by any bad conduct, and we have thus to go back to Regulation XI of 1825 and Act XXXI of 1858; by this latter law, it is only the settlement officer that can fix the rate for the ryot. These laws clearly show that the English proprietary right for chur land is not in the zemindar, thus backing up Regulations I to XLVIII of 1793, by which laws our rights are continued to us for ever. In our last letter we had the melancholy pleasure of informing your Honor that a costly interminable lawsuit was no panacea for all the misfortunes of a ryot's life; we had scarcely written these words, when we find it confirmed in the *Englishman* of the 14th June. An "important meeting of Landholders at Bankipore on the Bengal Tenancy Bill, 13th June." We beg your Honor's careful perusal of the various speeches made by the members of that meeting. His Highness the Maharajah of Hutwa goes over the old grounds which have been refuted so often, that really he should be ashamed of himself if he cannot refute the writings of the ryots and others. Assertions are of no value unless backed up by facts, solid reasoning and law. It is useless giving ideas of a bad state of about-to-be-affairs without facts, and according to the words of the Maharajah, we ryots beg to be excused from believing in the value of the zemindars irregular summary and *ex-parte* proceedings which they desire:—

Extract from the speech of Rai Prakash Lal Bahadoor, Dewan of Dumraon: "What if you change your laws, would you be able to meet these cases of oppression; *I say No.* I do not like to mince matters, and I will be as candid as I possibly can. A ryot is beaten and his crops distrained, his bullocks seized by one of these *subburdust zemindars* for not agreeing to pay an enhanced rate of a few rupees. He (the ryot) goes to the nearest police, and here he finds that the matter is one of the *longest purse.* He goes to one Court, civil or criminal, and has to dance attendance from day to day away from his distant home. In the meantime he spends *his all* in securing the attention of the *amlahs* and muktears, and in arranging to get up the preliminaries to a just decision of the case, and what after all if he gets a decree. He curses the day when in a freak of fancy he had chosen to fly for protection from the *subburdust* man to our constituted tribunals. I know of cases, sir, where the recalcitrant ryot, after playing *the role of subburdust ryot*, and winning in legal proceedings every inch of the ground against the zemindar, had ultimately thought it wiser policy to agree to what they thought his unjust demands. The present law is quite ample for all purposes, only, as I said before, it is the *administration that is in fault.*" This is nothing but setting Government at defiance, borne out by the *Indian Witness* of late date. What we ryots have always said is, that the zemindars consider themselves above the law and act so, and therefore the least that the Government can do is to fine them heavily for a first offence, and remove them for a second, strictly according to the established laws of this country. I beg your Honor will consider the style of argument used; it may be good pleader style to vilify your opponent at the first onset, but with thoughtful men it tells against the speaker. The Dewan of Dumraon Raj describes the zemindars as *subburdust*; to this we agree, for it is true he next calls the ryot *subburdust*, so as to make both parties *alike*; but as his speech goes on, we find that the ryot is not *subburdust*, but that he is a *law-abiding man*, and to the praise of the courts he is successful in his suit; but when he returns to his village his success in court is useless, other pressure is brought to bear, and he is obliged to succumb, and thus he "enjoys scarcely the fruit of his labours" promised to him by the Government from 1765 to 1793 and to 1884 and in future. This Dewan is trying to instruct the Government that their courts and police are useless, and that there is a power in this country superior to the Government, called the zemindari power; if so, no time should be lost in displacing it, as we have said before, and it is our ryot's right that the zemindar should be changed. We now return to the principles of the Bill, and before passing on to the prevailing rate, we wish to make some remarks, which may assist in describing the prevailing rate and its aspect. Your Honor, Act X of 1859 is to be superseded; being superseded it has no power, and therefore cannot bar our ancient rights. In all descriptions of zemindars and ryots, every other word refers to ancient rights of 1793, and before. We have said in our petition that the right of pre-emption being given to one man, the zemindar would keep off all other buyers, and the land and house of the ryot would be sold for a song. Your Honor, 95 per cent. of the lands of a village belong *to the inhabitants of that village* called public lands, and only 5

per cent. to the zemindars as nankar or khamar or subsistence land. If any person or persons should have the pre-emption of buying, it should be the remainder of the village community to whom it belongs, and to whom the zemindar could have no objection, and by public auction, then the ryot would stand a fair chance of getting his due. We cannot forget that before 1793 the zemindar made the ryots remaining in a village pay the rent of those that ran away, so that pre-emption is doubly the ryot's right. The right of distraint that the zemindars desire is certainly, according to your Honor's memorandum, not a humane proceeding; it is the power of turning a ryot out of his holding, and so bringing on death by starvation, and not according to the declarations of the Government before and after 1793, "and for the future ease and happiness of the ryot," that the ryot "should be kept in the undisturbed possession of his lands and houses." Regulation XVII of 1793 forbids the distraining of the houses and lands of the ryot or any other real property belonging to him—neither his plough, nor his bullocks, nor his seed for sowing next year. By this law he is preserved; the crop being hypothecated for the rent, why should the land be seized; also, is it not more humane to close accounts every year; by so doing there will be no arrears, no other debtor could seize the crop, and so force the ryot to be backward in paying his rent. When a record of land and rates is made, then with the old Regulation XVII of 1793—the law for distraint—the ryot would remain secure in the "undisturbed enjoyment of the fruits of his labour." No crop, no rent as of old, therefore no arrears of rent for after lawsuits, for seizure of the *ryot's landed property*. All suits between zemindars and ryots should not be biassed by native judges and venal amlahs, but by juries; and it would be a good thing introducing the system so as to lead to criminal suits to be tried in the same manner. To introduce the English law of distraint into India, it should be thoroughly understood. Supposing there is a distraint, if there are crops on the land, the landlord must wait till they are reaped (and cannot demand interest on the unpaid rents), if the crops are hypothecated to him, and if English ideas are going to prevail, then why should the native landholder ryot pay interest till his crops are cut and housed; our ideas are totally against the ryot paying interest on kists unpaid of the *current year*. For the rent of an acre or two you cannot sell up the whole of a tenant's holding, you can only distrain to the value of the debt; this would be the means of breaking up a ryot's holding piecemeal, and so make no end of divisions and sub-divisions. Bastu land, on which are the houses and granaries of the ryot, the zemindar can never have a claim to; it is useless to make patched up legislation for rights, and laws will then get mixed in inextricable confusion. The Government have an idea that the zemindars want support in their collection of the rent or revenue, but the zemindars have always collected their righteous dues, and much more, by the law of distraint, Regulation XVII of 1793, for 67 years up to 1859 without complaint, and with very little trouble; so why try to upset the best humane system: it is only unlawful demands that meet with opposition from the ryot. The zemindars are quite sharp enough and have brought suits for arrears of rent at "enhanced rates," and the courts have allowed it. It is this action that brings discredit on the courts. Your Honor, there is not sufficient open discussion on the laws about to be enacted—we mean discussion by the inhabitants of the country (the ryots), not the officials; the officials by their segregation by Government seem utterly unable to understand the wants of the people. Your Honor has desired that the Commissioners of Divisions will collect their subordinate officials and fairly discuss the old (of 1793) and new Bengal Tenancy Bills. We beg that your Honor will permit to be present any ryot so desiring to enter into the discussion, that he be not refused, and all that he has to say be strictly recorded and forwarded to Government, nay not only so, but that many ryots be invited, &c., &c, &c., &c.

We have the honor to be,

Your Honor's most obedient humble servant,

JOHN STALKARTT,
for the Ryots of India.

HOPE TOWN:
The 27th June 1884.

C. E. G.—Reg. No. 6200C—331—1-9-84.

To—His Honor the Hon'ble Rivers Thompson, Lieutenant-Governor of Bengal.

Your Honor—

In this letter we have promised to consider the prevailing rate and its aspect, but before doing so we will quote from the following address, entitled "An unbeliever's description of Christianity," by the late Right Hon'ble Lord O'Neill, so that we may have some axiom to work upon. Now, the very idea of a man having a right to anything involves moral distinctions. For if A has a right, B does wrong if he endeavours to deprive him of it. To do so would be to do him an injury—an injustice. It is something more than merely inflicting pain upon him, which is cruelty. The idea of its being an offence against right is also included. On this account I look upon moral distinctions as having a foundation in nature—in human nature at any rate—and it is because we have no right to injure our neighbour that the precepts of the Decalogue, those of them which inculcate our duty to our neighbour, were given. There are other possessions, external to the individual, the right of which is given by the law of the land, hence the idea of ownership; hence also the general consent of mankind that it is a wicked thing to deprive any one, either by force or subtlety, of what is his own.

The aspect of the prevailing rate is in conjunction with occupancy rights. The occupancy rights of the ryots were spoken of by Mr. Sheristadar Grant in 1787. Ryots had a right of occupancy so long as they paid the annual demands of the sovereign, not of the tax-gatherer, his servant. If the demands of the sovereign are limited by Regulation 1—48 of 1793, this limits the demands of the tax-gatherer to the same extent, and we do not see how the tax-gatherer is entitled to any more than the rates of 1793, confirmed in 1794, passed to remove all doubts. Then all ryots are entitled to rights of occupancy so long as they pay the rates of 1793.

Ditto the pergunnah rate of 1793.

Ditto the prevailing pergunnah rate of 1812.

The prevailing rate of 1812 must have been in existence before 1812, for we find no new rates were made that year: therefore they must be identical with the rates of 1793, confirmed in 1794, and so transmitted to and by Act X of 1859, for it is the first clause, and overrides the subsequent clauses. We have now to consider the effect of the occupancy right brought to notice in 1787, and carried through all subsequent legislation. The argument consequent thereon has been brought forward by the Duke of Argyll in his speech on the Irish Land Act (certainly a better term than the Bengal Tenancy Act), formed after the model of the Indian law. These arguments are to be found in the newspaper *County Gentlemen*, June 21st, 1884. True extract:—"In a single sentence His Grace set forth the actual state of affairs in Ireland in respect to the land. He said occupancy of land is at its full value, and the ownership of land is destroyed." Add to this that the prevailing rate is a fixed rate in India, the only clause for assessing the land (not for enhancement—a misnomer) to this day that can stand. We have a clear right that the other clauses be abandoned. The right of occupancy being in existence, therefore the ownership of the land did not belong to the zemindar in 1784, 1787, 1793, 1812, 1822, 1825, 1848, 1859, nor since to this day, 1884; therefore the description of the Act should be altered, and called the Indian Land Act, which would mislead neither old nor young civilians. The question arises whether the ryots are to be deprived of the prevailing rate, which will, of course, include the right of occupancy. From the memorandum of Mr. Reynolds it is quite clear that the Government see the drift of this clause it on one side, and the other clauses on the other side, all cannot stand: one must give way to the other. If the prevailing rate is one of the clauses, and it should be so, for has it not come down from 1793, 1812, 1859, 1884, and it is proposed to be continued in the law after 1884. In the list of the Select Committee, marked A, therefore it is *Seniores Priores* to all the others, and should not be eliminated from the Bill on any account; but undoubtedly the others should be. If the present reign had been Hindu or Mussulman, then on account of the want of the sovereign, and of the British reign the wants of the country, then the taxes might be raised, for a time only the Permanent Settlement might be broken, and the amount of the war tax levied by Porus, 25 per cent. of the gross yield might be taken; but as it is legislating for the benefit of the tax-gatherers, it appears to be a questionable state of morality for the British nation to indulge in, especially as they plume themselves *par excellence* as the people of God to do that which is right," and not to leave the people at the mercy of the tax-gatherers. The morals of the Hindus and Mussulmen would not prevent them acting as they pleased, but with Englishmen it would only be dire necessity that would force them to break through the Permanent Settlement for the wants of the country only; but this is a question of morals, is undoubted, and from the above quotation from the writings of the late Lord O'Neill we are not singular in our belief in respect to our duty to all men. From the history of the great Akbar, a Mussulman, the taxation of all ryots remained stationary for 140 years, and enhancement of rent by the British Government would not be allowed; and are we, Christians, the salt of the earth, tobe less righteous than Mussulmen Mahomedans and permit an enhancement every ten or fifteen years? The morals of the Mahomedans are very low; "thus—make money, but when you do so, give to the church!"

compare the above with the tenets inculcated by the Decalogue, are we to be less just than the Mussulmen? What is the idea conveyed by the words "the prevailing rate," it means universal equality. Why do the inhabitant of the Soudan attach themselves to the Mahdi? The very same idea,—justice. The reform of Islam, the establishment of a universal equality, law, religion, and community of goods" (nineteenth century). No where are the natives so contented, peaceably inclined in their relation to the zemindar, paying their rents freely, as when they know it is the old pergunnah rate—*all equal before the law.* By this Bengal Tenancy Act (even the description Tenancy Act is a mistake), it should be Bengal Land Act. There are to be three to four classes of ryots. We, ryots, asked for a reform of the revenue taxation, and we find we are to be more heavily treated and taxed, like the action and speech of Rehoboam, the successor of Solomon, and "whereas my father did lade you with a heavy yoke, I will add to your yoke; my father hath chastised you with the whip, I will chastise you with scorpions:" but not for the benefit of either Queen or nation; this question is distinctly asked by us, the poor. If there is any new assessment, it should be by a jury of the inhabitants, not of the zemindar, or by any Judge. For it was our privilege by section 54 of the Resolution of the Permanent Settlement, to which we have before alluded, and we beg that the old prevailing rate be maintained as our only safeguard, and we, the ryots of India, shall ever pray.

JOHN STALKARTT,

The 25th July 1884. *For the Ryots of India.*

W. J.—Reg. No. 6197C—331—1-9-84.

To His Honour the Hon'ble Rivers Thompson, Lieutenant-Governor of Bengal.

Your Honour,

Permit me, on the part of the ryots, to thank Your Honour for forwarding their letters to Your Honour, so that the Government of India has published them in the Government Gazette, &c, &c. May I be allowed to bring to Your Honour's recollection my expressed opinion that the time allotted to the 14th August was not sufficient to express fully our views; also that the ryots should be admitted to the conferences of the officials, and to the Legislative Council, that the points under discussion might be brought down to as few as possible, to be submitted to the Legislative Council of India. In verification of the above, we quote from the report of the Government of Bengal on the Bengal Tenancy Bill, 1884, pages 2008-2009, the opinion of the well known Sudder Judge, Mr. Hawkins, who thus interpreted the Permanent Settlement: "The contention of the petitioners is that of the three parties—the State, the zemindars, and the cultivators; the first had, without consulting the other two, virtually plotted out the map of the country, that it then distributed the different portions to individuals comprising the second class, defined most accurately the respective liabilities to the State, and required them to respect any claim against them, such as might then exist, on the part of *any individuals* of the *third party*. Nothing was left open for legislation as to the substantial rights of subsequent cultivators." This is begging the question; apply this principle to the present intended new Tenancy Law, viz. that it has no power over "subsequent cultivators." This will at once bring a smile on the countenance of every official and non-official—eh! The law for murder passed only for the punishment of the murderers of the date of passing the law against murder: therefore all the murderers since punished have been unjustly so. It is self-evident to every right-thinking man that such a state of things could never have been contemplated by *any law*. The law was passed for the future cultivation of the soil, even for *waste lands* (see Regulation XLIV of 1793); the law for assessing waste lands, which of course at that time could not have been under cultivation, and must have "subsequent cultivators," at *the same rates as for lands then under cultivation*, in fact supported by Regulation IV of 1794, section 7, and by No. 54. Resolutions passed for the Permanent Settlement, respecting receipts of rents, which are divided into three parts only, viz. khoodkasht, pyekasht, and khamar. This settles the question of non-enhancement of rates of rent of all land; not a word respecting these receipts not applying to future cultivators, more particularly as the zemindars wish to claim waste lands as khamar lands, whereas by Regulation VIII of 1793 the zemindar is strictly enjoined by section 52 to let the whole of the remaining lands, must be to "subsequent cultivators." As the Legislature of that day is silent on this point, it classed all "subsequent cultivators" as having the rights of the cultivators of 1793—not a word for giving receipts to ryots, holding only a right of occupancy, meadee pottas, tenants-at-will, &c., &c. We quote again page 2009: "This the Permanent Settlement of Bengal, whether good or bad, as a piece of fiscal policy, whether right or wrong as a political measure, was the result of mature deliberation, and to break it by roundabout measures would obviously be worse from considerations of either kind" (Act X of 1859, &c., &c.). Then let the old form of receipt be restored with the penalty attached for non-fulfilment, "khoodkasht, pyekasht, and khamar," leaving not a section for ryots with rights of occupancy only, meadee tenants, or for tenants-at-will.

Many object to the record of rights being made on the principle that it will make disturbances. The record of right must accord with the receipts that the zemindars, like any other tradesmen, are forced to give, declaring in the Bill the number and qualities of the goods sold. The ryots ask nothing out of the ordinary routine of business. Of course, if the above is listened to by the Government of India, the whole chapter on enhancement of rent should be struck out, and the remaining legislation considerably altered to meet the requirements of the older regulations, which this Bill professed to restore by Regulations VIII of 1793 and VII of 1822. There has been a great deal of injudicious talk, such as the "village communities have been broken up in Bengal since long before the Permanent Settlement," &c., &c. "Such claims must have been extinguished by the conquering power having laid hands upon them, and made them over to the landlords of their choice." The same thing *versus* the above (see the petition to England before 1784) may be said with respect to the English proprietary right (miscalled so) of the zemindars, who were made only landholders by Regulation I of 1793, and all their proprietary right extinguished by Regulation XVII of 1793. "You shall not distrain the land and houses of the ryots, not even his plough, his plough bullocks, nor his seed for next year's crops." This is important, as the present intention of the Bill is to sell all the rights of the ryot instead of distraining his personal effects: to sell him up contrary to the provisions of the Permanent Settlement is manifestly unjust. On a cursory perusal of the various memoirs of the Government officials, their want of knowledge of the principles governing the Permanent Settlement Regulation VII of 1882 is very apparent, as their opinions are given irrespective of the rights conferred on the ryots by the above settlement. By Regulation VII of 1822 with each settlement there was record of right. Your Honour desires that there should be a record of right made for the whole of Bengal. Many of the officials support the idea of the record of right, but the zemindars do not want the rights of the ryots to be entered in the record, &c., &c.

Another error of Sudder Judge Hawkins, page 2009: "The engagements of the time, it may be repeated, were made in respect of land, &c., &c." No such thing: the lands are not divided into khoodkasht resident, pyekasht non-resident land, but the engagements are with the ryot, if he resided in the village. Khoodkasht resident ryot, no matter what land he cultivated, the rates could not be altered; the same also with the pyekasht non-resident ryot no matter what lands he cultivated; both were entitled to fixed rates, that is, no enhancement,

of rates of rent. It is an error of the courts to ask "what is the origin of the tenure?" It should be what are the rights of this "Bengali or ryot?" Is he khoodkasht or pyekasht? The petition of the zemindars wish all to believe that their ryots are all foreigners, and never lived in the village, or any other village in Bengal.

We revert again to the Permanent Settlement. The officials by their memoranda would make us believe that the rates of rent were very carelessly settled. Even if they were all that Regulation VIII of 1793 permits is a correction of the assessment not enhancement of rates of rent. For twelve years before the Permanent Settlement, the zemindars were yearly tenants-at-will of their official status as zemindars (so all their proprietary claims must have been extinguished by the conquering power, page 2009); they had to collect all the revenue, and pay it into the treasury, every pice of it, and their accounts were rigidly scrutinised. The whole system was a very elaborate one of proportion (ratio) throughout; the lands were divided into aouel, doem, tertium, 1st, 2nd, 3rd, 4th quality for paddy land, the same for middle land, the same for dhee (high land), purtee or grazing land, and between each set of land, the ratio or proportion (proper) was established; so no matter what land a ryot ploughed he was not under the burden of inequality when he sold his crop in the open market. Now, if a zemindar, at the passing of Act X of 1859, or before, went to court and stated that the ryot was not paying *the* prevailing rate, ten to one, he was stating an untruth. Suppose him successful, and he has gained his suit, and broken the rate of any one class of land, say, the 2nd quality, then the ratio of this 2nd quality to all the other lands of the village is broken, and the equilibrium upset respecting other villages. No wonder former Moslem sovereigns never broke the standard assessment, but regulated the money they required by a percentage on the azul or standard assessment, so that the country was not demoralised as it is now by Act X of 1859. It is perfectly agreed to by Lord Cornwallis that the making of abwabs is a royal prerogative, and does not belong to the zemindars; so that if the above principle is caried out, the claim of the zemindars to enhancement of the rate of rent has been long ago extinguished by the conquering power. The rights of the zemindars are to be racked up, but the rights of the village communities are not to be thought of, though only as late as 1793 (see No. 54, Permanent Settlement papers, up to that date) the villager had to pay the rents, not his own only, but the rents of those that ran away; so the assertion that the rights of village communities of Bengal have been broken up in Bengal since long before the Permanent Settlement is a downright untruth. This is not evenhanded justice.

The zemindars by their spokesman, the Rajah of Durbhunga, page 1868, speak of the Permanent Settlement as the Magna Charta of the rights of the zemindars and ryots; in other words, one of the fundamental laws of this realm under the "Empress of India, Kaisir Hind," which it would be treason for any Legislature to break. We, ryots of India, are quite willing that it should be so, and earnestly beg that Your Honour will institute a court to try the rights of the zemindars and the rights of the ryots by professional barristers on both sides. If those points of non-enhancement and non-ejectment are not determined, it is useless to ask opinion of gentlemen, official and non-official, for the points of dispute are not determined by such a course of action, and matters remain *in statu quo* unless it is determined to ignore *the Permanent Settlement and make fresh legislation.* If so by Sudder Judge Hawkins there were three parties to the Permanent Settlement—the State, the zemindars, and the cultivators—and in the Bengal Tenancy Law the rights of the State are omitted. If it is intended to give the zemindars anything above the 10 per cent. of the Permanent Settlement, then it is nothing but right that the portion belonging to the State should be increased in the same proportion. We refer to page 1722 by Mr. Finucane, respecting the village of Jaezpotee, being 500 per cent. above its original assessment. A zemindar of Burdwan five times, of Dinagepore twice, a zemindar of Durbhunga thirty-eight times the surplus over Government revenue, &c., &c. We may make a general average of all zemindaries that their present rental is five times the amount that they pay to Government under the Permanent Settlement; in other words their right to the rental is Rs. 100, but their present collections are Rs. 5,000, Rs. 4,000 of which they retain, instead of the above Rs. 100, and yet they say that they cannot collect their rents, and want a summary law of distraint: therefore it is nothing but fair in the new order of things that the Government should have at least 50 to 75 per cent. of the collections of the zemindars. Then the Road Cess and Public Works Acts may be cancelled, for they press very hard upon the ryots. If they cannot pay their present assessment, how can they possibly be expected to pay these new Government taxes. Your Honour is well aware that there are six or seven millions of ryots so poor that they are unable to resist the zemindar in any shape, and particularly the idea in the new Bill that if they do not agree to enhancement they will be summarily ejected. Let me recall to Your Honour's mind the history of Jonah whom God sent to give warning to Nineveh. Most people are taken with the romantic portion of the story that Jonah remained in the whale's belly three days and three nights, but the moral does not lie there, but in the last verses of the 4th chapter of Jonah, verse 2nd. For I knew that thou art a gracious God and merciful, slow to anger and of great kindness, and repenteth thee of the evil: "Verses 9, 10, 11, And God said to Jonah, Doest thou well to be angry for the gourd: And he said: I do well to be angry even unto death: Then said the Lord: Thou hast had pity on the gourd, for the which thou hast not laboured, neither madest it to grow which came up in a night, and perished in a night, and should I not spare Nineveh (that repented), that great city, wherein are more than six score thousand persons that cannot discern between their right hand and their left hand and also much cattle.

HOPE TOWN,
The 3rd November 1884.

JOHN STALKARTT,
for the ryots of India.

W. LeB.—Reg. No. 9012C—327—11-11-84.

No. 1795R, dated Bhagulpore, the 8th August 1884

From—G. N. Barlow, Esq., c.s.i., Commissioner of the Bhagulpore Division and Sonthal Pergunnahs,

To—The Secretary to the Government of Bengal, Revenue Department

At the special request of the writers I have the honour to forward report on the Bengal Tenancy Bill by Messrs. Eddis and Hennessy.

2. I further send a report by Baboo Soorja Narain Singh, leading pleader of Bhagulpore.

No. 233, dated Purneah, the 11th July 1884.

From—W. EDDIS, Esq., Asst. Manager, Raj Durbhunga,
To—The Collector of Purneah.

I HAVE the honour to acknowledge receipt of your letter No. 427G of 7th June, forwarding me copy of the Bengal Government circular No. 3T—R of 24th May 1884, regarding the revised Tenancy Bill, and requesting me to give my opinion on the points mentioned therein. I proceed to do so, taking the paragraphs *seriatim*.

CHAPTER II.

2. *Paragraph* 4.—I do not think there can be a simpler definition than "a tenure, as distinguished from a tenancy, may be described as a holding held for the purpose of collecting rent, while a tenancy is a holding held for the purpose of cultivating." The object of section 5 is admittedly to get rid of the self-constituted tenureholder *as an occupancy ryot*. This section and also 37 are professedly in the interest of the cultivator. The mode of attaining the desired object seems to me to be roundabout. Does it not entrench also upon the zemindar's right of creating a tenureholder? A simpler way of protection would be to give every resident cultivating ryot paying a fair rent a right of occupancy. The Hon'ble Rai Kristo Das Paul in his protest contends that these provisions improve the position of the original occupancy right ryot. He had a permanent holding. If he acquires the right of a permanent tenureholder he (section 11) acquires the power of transfer, free from the landlord's right of pre-emption, to which as an occupancy ryot he was liable. Mr. Secretary MacDonnell says (paragraph 4, bottom of page 2): "The formal recognition by the Bill of the transferability of occupancy rights may tend to the purchase of such rights by money-lenders (whom it is not the wish or object of the Government to benefit at the ryot's expense), and consequently to the rack-renting of the cultivators holding under such purchaser" Then thy give the right? Why interfere with the zemindar's proprietary rights distinctly given by the perpetual settlement? The custom of sale of jumas, more or less prevalent, is working its way, and in time may become "common law" which no one will then dispute. Is it not unwise to forestall the natural process? As to the relation beween ryot and money-lender, it is surely wrong to strengthen the latter's power by legislation. The cultivating ryot can best be protected by giving him right of occupancy of his land, and by fixing some limit beyond which he cannot be assessed, thus giving him a chance of acquiring wealth, and discouraging rack-renting. While every one must wish to see the lower classes raised, it must be remembered that small holdings *cannot* support the agriculturist and his family without other means. A five bighas holding even, unless under very exceptional circumstances, will barely support the ryot and his family. There is no good aiming at impossibilities. A large proportion of the agricultural class must be content with the lot of labourers. Cultivators of from 20 to 50 or more bighas of land by the help of paid labour are what is required—not a mass of petty holders cultivating from one to three or four bighas. They must be always from hand to mouth, and one famine season throws them on charity, or they die.

"The ascertainment and registration of subleases" seems to me unworkable and only likely to cause litigation and expense. Subletting *will* take place Protect the cultivating ryot by an occupancy right and by a limit to assessment, and leave the tenureholders to the terms of their registered leases.

3. *Paragraph* 5.—Would not most of the difficulties vanish if the tenureholders were left bound by their tenures and the cultivating ryot protected by the right of occupancy and a limit to assessment?

4. *Paragraph* 6.—I think the 20 years' presumption rule is unjust. It has no sound foundation, and it is a great temptation to immoral litigation. It is injurious to the ryot, and acts against the fair and in favour of the unfair zemindars. To say that it has been law so long is no argument. The permanent settlement has been law much longer, and yet the zemindar's proprietary rights are to be taken away without compensation or compunction.

5. *Paragraph* 7.—As regards occupancy right in land "over an estate," I think the occupancy right of a cultivating ryot should be within a certain limit of the village where he resides. If he took lands beyond that limit he would be a tenureholder under a lease with an occupancy ryot or labourers under him. I would cut out the words "or estate" from section 26. As to the sections 28 and 29, if the landlord obtains by purchase or otherwise the ryot's right, he obtains the right of settling another ryot, or of himself cultivating the land. Is the question what he will do with the land one for legislation? Such legislation seems to me to be in the direction of Mr. Herbert Spenser's "Coming slavery," unless under some very exceptional circumstances he would of course settle another ryot

6. *Paragraph* 8.—Section 31 (*b*), (*f*), and (9) (*b*). Of course both zemindars and ryots should be encouraged to make improvements, but I do not see the need of legislation on the matter. At present certainly the ryot does not make them. Legislation on the subject, and especially regarding compensation for improvements, is forestalling. It is suggesting false claims and inviting expensive litigation. (*f*) I think that legalising transfer is injurious to the ryot. Protection from the mahajun's intrusion would be secured rather by not permitting transfer, except through the zemindar. It is a right that was never intended to be, nor was it in any way, conferred on the ryot by the perpetual settlement. On the contrary

it was specially given to the zemindar. A custom of sale is growing up in some districts unopposed by the zemindars Let it grow. To *legislate* in favour of transfer by the ryot is a breach of faith Let the custom take root and become common law. At a future time it may b crystallised into "statute law." (*g*) I would leave subletting alone. You cannot prevent it, but it need not be encouraged. Petty holdings are a source of misery. A ryot and his family, be the rent what it may, cannot more than barely subsist on a holding less than five bighas. To live, the petty holder must supplement his means by labour. I would strike out (*g*). Leave the matter to custom.

7. *Paragraphs* 9-10.—Section 59 of the old is much modified by section 14 of the revised Bill inasmuch as the interference in private contract of the revenue officers is struck out. The provision under (2) of clause 59 of the old Bill limiting assessment to not "more than one-fifth of the estimated average annual value of the gross produce of the land," &c, is struck out This is I think a mistake. The principal is sound, and if it can be worked is a great security against rack-renting and overassessment. It has the merit of simplicity. That there may be difficulty in working it must be allowed. The reasons for giving it up, alleged in paragraph 10 of the Government of India's letter No 784 of 5th May 1884, may be cogent, but are not I think altogether unanswerable. Considering the great gain such a simple guide would be, it is surely worth being attempted. It would be useless for very small holdings, and it might not do alone for any. It may be necessary to work it with other rules, but an effort to retain it as a general guide should, I think, be made. Taking a proportion of the produce of the soil for the Government revenue was ancient custom. It prevailed both under the Hindu and Mahomedan Governments. The custom was reduced to an intelligent system by Todermull, the great Financier of the Emperor Akbar. The proportion taken from the ryot was nominally one-third. The proportion proposed in the last Bill was one-fifth, leaving four-fifths for the ryot. This plan will not work infallibly any more than any other device. The attempts in this Bill to lay down law for every detail must fail in practice. The law will be a dead letter away from the courts, and near them the legal profession will make fortunes, and the ryot be ruined. It must be remembered that gaining the suit, and costs being saddled on the zemindar, does not bring the ryot off scot free. The law vulture's exactions are 10 and 20 times the legal costs, and *they* are heavy enough. As to the limits of 50 and 25 per cent, or so many annas in the rupee, I do not think these rules are fair or will work. The question of enhancement should be left to the landlord and tenant, there being some guide as to what is a "fair rent" which will enable the court to limit the assessment. Under the Bill enhancement through the court is encourged which will flood the courts with litigation. A settlement of rate of rent out of court should rather be encouraged with power of appeal by the ryot to the court against unfair rent. Such suits should be tried by exceptionally experienced officers, with an appeal only to the High Court. The decisions it may be hoped would be few, but they would be precedents for large areas. Of course there should also be provision for the zemindar to sue for enhancement. Circuit native officers of experience for local investigation into rent disputes might be useful to assist the court.

8. *Paragraph* 11.—Why should the law recognise difference between rent for the same description of land payable by occupancy and non-occupancy ryots? As to land falling into the zemindar's hands by abandonment why not leave the thing alone? Every detail hampers future legislation and is in the mean time only so much gain to the bochas who prey on zemindars and ryots. A royt under bad advice will pay in one suit with the zemindar more than the enhancement asked would amount to in 50 years. I can give a case of which you are cognizant, where a ryot has paid over Rs 6 000 in trying to escape a moderate assessment barely half the "fair" rent of the land, and to which he had agreed. The simpler the law the better. Nothing can be more vicious than the principle acknowledged in this Bill of legislating carelessly and admittedly with probable injustice, with the expressed intention of correcting mistakes by future legislation, regardless of what thousands, perhaps millions, may have already suffered by the mistake. A wise man says—one who has studied sociology deeply—" To what extent does it happen that the multiplying and elaborating of institutions, and the perfecting of arrangements for gaining immediate ends, raise impediments to the development of better institutions and to the future gaining of higher ends "

9. *Paragraph* 12.—*Bastu land*, homestead, with arable land, is assessed in Lower and Eastern Bengal at say double the rent of the arable land. In Behar it is, I believe, generally held at a much lower rate, and frequently, as in the Purneah district, rent-free. Why l gislate about it. The law will not alter the custom, except perhaps in the neighbourhood of the courts—those prime sources of misery to the ryots—and there the ryots will be ruined by litigation. The Government seems to have no conception of what bringing ryots into court means. The zemindars may be fair game, but it should have mercy on the ryots. I think "the importance of the question and its relation to the well-being of the ryot" can be very much rather than "cannot be over-rated" Biltori lands held by artisans and shop-keepers without arable land, if we are to look ahead, might be guarded from the "unearned increment" trouble. The increased value of such lands where a town springs up should belong wholly neither to the occupier nor to the landlord, but to both with a share to the community, whose presence has caused the increased value, for the general good under municipal taxation.

10. *Paragraph* 13 —The question of reduction of rent may, I think, be left generally to the zemindars and ryots. Sufficient causes and remedy for injustice by the zemindar may be left to the court when trying the question of a "fair rent" If legislation on these

details *must* be, the grounds (*a*) and (*b*) seem reasonable; but there may be other causes equally so which may be left to the discretion of the court. I do not think the detailed enquiry suggested in paragraph 13 regarding (*a*) of section 51 requires legislation. The matter would come under decision as to "fair rent." As to commutation of grain rents to money rents, I expect the ryot would gain by the matter being left to private arrangement between him and the zemindar.

11. *Paragraphs* 14 *and* 15.—The correctness of price lists is very important. Whatever principle of enhancement is adopted, such lists must be useful. They should surely include the price of *all*—not only staple food crops. Paragraph 15 instances jute only as a more valuable crop than the ordinary staple food ones. The Government of India's letter No. 784 of 5th May 1884 (paragraph 13), says: "The Select Committee have restricted the staples to food crops, the objection to the inclusion of other staples, such as jute and indigo, being that they are grown for export in place of food crops, and are subject to such great fluctuations in price as to afford no reasonably stable standard of comparison." This sentence appears to me singularly unfair. Are indigo and jute the only crops grown for exports? What food crop is not grown for export? Where would be the wealth of the country without export? This objection to making the price of more valuable crops an element in fixing rent is surely utterly untenable. Are not rice and wheat the chief food staples exported as well as cotton, oil-seeds, jute, indigo; every crop in fact more or less? In making the price of crops a guide to fixing rent—and it is a very proper guide—all principal crops should be taken. There is of course difficulty in making price lists. There is indeed so much difficulty in all the matters of detail worked up in this Bill that the cardinal question regarding it really is—Is it wise to attempt to legislate on details that are and must be much better settled by custom? That the ryot should be protected from unfair assessment, which means that a margin should be left him beyond bare subsistence, is as much a part certainly of the spirit of the perpetual settlement as the proprietary right given by it to the zemindar; but the Legislature, laying down a few board principles, and giving some general rules as guides, should leave details as much as possible to private arrangement. No doubt prices of produce must be one rule.

12. *Paragraph* 16.—I cannot see on what principle rent for the same description of land should vary because occupied by ryots with arbitary designations, provided they are resident and pay a fair rent. I feel sure that there is no general desire on the part of zemindars to dispute the ryot's right of occupancy. What frightens them and puts their backs up is the conditions tacked to the right of occupancy, which amount to confiscation of their (the zemindars') proprietary rights. Nothing can more tend to create ill-feeling between zemindar and ryot than taking the former's rights, solemnly conferred by the British Government, by a law which has given prosperity to a province and made it the milch cow of India, and giving them to the ryot, especially when these rights are not asked by the latter, and still more so when their bestowal to a great extent certainly is a positive injury. I think every resident cultivating ryot—let him hold his land from whom he may—should have a right of occupancy, so long as he pays a fair rent. For pykust or non-resident ryots, the rent should be settled by demand and supply, liable to some limit, securing a fair proportion of the produce to the ryot, and the crops should be liable to stringent unfettered distraint. His occupancy, unless fixed by the terms of a lease, should be from year to year.

13. *Paragraph* 17.—On what principle are the provisions (*a*) and (*b*) of section 62 framed. Where there are several holders between the cultivating ryot and the zemindar, how are the accumulated 50 and 25 per cents. to be paid by the unhappy cultivator? If some limit is given to the assessment of the cultivating ryot, the last link—substantial protection—will be given; the intermediate tenureholders will take care of themselves. If their tenures are not worth holding they will throw them up at once if permanent, or at the end of their leases. Tenureholders—farmers cultivating their lands by the help of labourers—are a boon, becoming a body of substantial yeomen, but not those who merely rack-rent. I do not see the object of the limit in section 38 to an occupancy ryot subletting his holding beyond seven years. If a *bonâ fide* resident cultivator is settled on land, he should acquire a right of occupancy, and should not be disturbed so long as he pays a fair rent.

14. *Paragraph* 18.—I object in toto to the 20 years' presumption. As to section 83, referred to in paragraph 17 of the Government of India's letter, its provisions are, I think, unfair to the zemindar, tending to foster disputes between him and the ryots. It would be far better to search for some just means of appraising the produce with the zemindar's help. It would contribute to the solution of the problem how to get at a proportion by which to limit assessment. At all events the section recognises the possibility of appraisement which, in rescinding the one-fifth limit, was considered impossible. (4) Meant to check or punish unfair play on the ryot's part is on the principle of Mr. Ilbert's paragraph 41 in statement of objects and reasons of the Bill. Section 83 tends to foster disputes and litigation.

15. *Paragraph* 19.—The Government of Bengal admits in this paragraph that the provisions regarding improvements (chapter IX) do not appear at the present moment to be of much practical utility, but it is hoped that in the future they will be found valuable. This is not a right principle of legislation. Why clog the Bill with provisions admittedly not at present applicable? Wait till the ryots make improvements and circumstances arise which warrant interference. At present these provisions only invite false claims. The improvements and compensation clauses of the Bill struck a no less eminent and experienced authority than Mr. Seton-Karr as so ridiculous and uncalled

for that he calls them "the mere craze of the philosopher of the cabinet and the pundit of the desk." The attention of the Commissioners and Collectors of Bengal is requested as to whether the "general interests of the country" will not be advantaged by conferring by a solemn Act of the legislature the right on the non-occupancy ryot to construct a well! Who would prevent his making one? If it is feared he will be deprived of his well by ejectment, adopt a broad principle and give him right of occupancy so long as he pays a fair rent. You propose to make him *resident* by permitting him to build a house (section 90). But ejectment or no ejectment let the wells be made without wasting time and money in legislating about it! "The general interests of the country" will undoubtedly be advantaged by the making of wells! This subject of wells is one which has at various times and in different places apparently exercised the Government. If Mr. Seymour Keay is to be believed (and I admit his assertions must be received with caution)—*vide* an article in a late number of the Nineteenth Century—Government is the only landlord in all India who puts obstacles in the way of ryots making wells. He draws a touching picture of the ryot, his wife and children picking away for years in the hard soil, at last finding water, only to find themselves taxed, because they have found water. If this writer's statements are but partially true, the Government of India in its dealings with its ryots in the North-West Provinces and in Bombay merits the exhortation "Physician, heal thyself." Any way, "in the general interests of the country" let wells be made! Section 90, about a non-occupancy ryot being allowed to make a house to live in, seems absurd. He makes himself a house, becomes a resident ryot, and should acquire a right of occupancy.

16. *Paragraph* 20.—Why should there be difficulty about the abandonment of a holding? It is the universal practice of the country founded on ancient custom and confirmed by British law that land abandoned by the ryot reverts to the zemindar. That it does so one would think is self-evident. Why throw in a bone of contention on such a simple matter? If a landlord ejects an occupancy ryot forcibly to put in another at a higher rate he is doing a distinctly illegal act. It has nothing to do with his right to land abandoned by the ryot. One or two sharp punishments under the Penal Code would soon stop such illegality. As to selling the abandoned land, it would be a clear infringement of the landlord's rights. The permanent settlement—and the words of the Statesmen who had to do with the passing or criticising of it found over and over again in their minutes and letters—prove that the proprietary right was given, and was beyond a shadow of a doubt meant to be given, to the zemindars.

17. *Paragraph* 21.—Measurement of a village should certainly include lakraj tenures; but I do not see what the zemindar has to do with their details. He has a right to ascertain the quantity of land claimed as lakraj, because any excess must belong to his village I think the measurement should always be by claim, the cottas marked by the length of the local pole, but brought into English acres, both being recorded. In statistical records it would never do to have the area registered by innumerable different standards.

18. *Paragraph* 22.—If care is taken in the appointment of a manager—if possible one approved by all the shareholders—and if proper control is exercised, there should be no difficulty.

19. *Paragraph* 23.—A record of rights is of course good in theory both for zemindar and ryot, but can it be carried out? Unless correct, it would of course be worthless. The hearty co-operation of the landlord and tenant are necessary to obtain reliable village statistics. Without this, how are the continual changes to be registered? With the zemindar's co-operation nine-tenths of the difficulties in collecting reliable statistics would vanish, and the great end—to fix proportion of produce as a limit to assessment—might be attained. Under the hal hasilee tenure much of the information was annually collected by the village gomastas.

20. *Paragraph* 24.—It would be better to leave these matters to mutual arrangements. It is quite impossible for any court to manage all the details of the relations between landlord and tenant. The law will either be a dead letter, or confusion worse confounded will arise in every district. If the Bill respected the zemindar's rights, his co-operation would remove many difficulties.

CHAPTER XIII.

21. *Paragraph* 25.—Distraint as proposed in the Bill is a farce. Where are the "officers?" What like would they be? Would they be bribe proof? *Bonâ fide* distraint should be allowed (most certaintly for pykust ryots) without the interference of the court, abuse being severely punished. Such a simple cutting of the knot will I fear not be allowed, but such distraint was always the custom of the country. It is understood and accepted by the ryot. "It may be, as experience has in some instances proved, that the abuse of the right of distraint is within the power of the executive to suppress, and the Lieutenant-Governor himself thinks that there is a great deal in the statement that in the case of an improvident peasantry a remedy against the crop is a more humane process than a remedy against the land." True words—why not act up to them?

22. *Paragraph* 29.—Without admitting the propriety of other restrictions in this Bill, I think the rate of rent on deara lands should be left quite unfettered as to term or rate. I do not see why a ryot should not have a right of occupancy as well in deara as in other lands, if he is resident within a reasonable distance of them. As regards contract, I would leave zemindar and ryot unfettered except as regards the ryot's occupancy right,

which I hold to be as much given by the permanent settlement to the ryot as the proprietary right was to the zemindar—certainly in the spirit if not in the letter. The khodkast, *i.e.* resident ryot had, I am sure, in ancient times a right of occupancy in the land he tilled, so long as he paid rent, and the proportion fixed by the Government defined what that was to be. This right was acquired by custom, created by circumstances of which it was the natural result. The occupancy of the land was hereditary. This tenure of land was the foundation of society, and even in the old days of lawlessness was as a rule respected. The Hon'ble Justice Field puts it fairly in his " Land-holding, and the Relation of Landlord and Tenant in various Countries, " see pages 423 to 425, paragraph 225. Even were there a doubt, it would be right to give the benefit to the ryot. Justice Filed says : " Non-fulfilment of the condition on which the land was cultivated, non-discharge of the Government dues, or non-delivery of the proprietor's share of the produce was the only ground which rendered it necessary to remove a tenant." No doubt when might was right. "Some land-holders conceived themselves to possess the power of ousting their tenants in favour of other persons who were willing to give a higher rent, but in a state of society in which rents were regulated by custom, not by competition, such new tenants did not often present themselves, and so the practical exercise of the power was not frequent. Thus, notwithstanding occasional instances of ouster, it gradually became usual, in the language of a later stage of development, not to evict khodkast ryots so long as they paid their rent It has been well observed that mankind's notions of right are founded on prescription, and under a Government of absolute discretion, destitute of the modern appliances for legislation, custom was really the sole legislative power." Surely this line of argument is unanswerable. As regards interference with contract generally between landlord and tenant, I think the Hon'ble Rai Kristo Das Pals words in his protest to the Select Committee's report are very true—"I cannot conceive that if the ryot can fairly be considered a free agent in mortgaging and selling his hearth and home, or his agricultural land; in disposing of the produce of his field, or engaging his labour, and fulfilling a thousand other obligations of every-day life, why he should be considered incompetent to enter into contracts with his landlord." I would just remark the natural way in which the words " hearth and home or his agricultural land " come in as shewing how the right of occupancy is taken for granted. Opponents of the Bill admit that 90 per cent. of the Bengal ryots have occupancy rights, and I do not suppose there is one zemindar in a thousand who would deny the right so long as a fair rent is paid. No educated zemindar would, I think, dispute the fact that such was the existing custom under the native Governments, both Hindu and Mahomedan, and that the perpetual settlement, if it did not positively deny the right, must have admitted it by implication if not in words. I think the legislature is entitled under the provisions of the perpetual settlement to protect the ryot by limiting his assessment to what is fair, but that, while some general rules may be given as guides to determining the point, in cases of complaint that rent demanded is not fair, the zemindar and ryot should be left unfettered to make their own registered contracts.

23. The only other matter of importance on which the circular asks information is regarding the ootbundee and hal hasilee systems. The ootbundee* is a tenure prevalent in Krishnaghur and neighbouring districts under which I believe the ryot cultivates part of his jumma leaving other parts to rest, paying only for what is cultivated. This practically decreases the rent the zemindar would receive were all the land properly tilled.

* I am not quite sure about this tenure. It is so long since I was in Krishnaghur.

The hal hasilee tenure prevails or did very generally prevail in Purneah.

Hal hasilee is I believe a compound Persian word meaning *hal* now—present; and *hasil* crop. It implies that the rent is calculated on the quantity of land at present under cultivation, and at different rates for the various crops sown. The tenure arose in Purneah probably when large tracts were devastated by the river Koosee, when there was much waste land and few ryots; and the quantity of the land was continually changing by deposit of sand, and its locality by the numerous shifting streams of the Koosee. The ryots cultivated here and there as they got patches of culturable land, and sowed such crops as suited the soil or the season. Every year their scattered holdings were measured and the jumma determined by calculating at the different rates for the various crops sown. This hal hasilee tenure in Dharampore has very generally, as the Koosee receded, drifted into one rate—*nugdi*, locally called *hustaboodi* tenure : perhaps *nugdi* is hardly the name, as I understand that to be a term in distinction to *bowli*—the one being rent in cash; the other in kind. The rate is now one average one instead of the total of 10 or 12 different rates, though the latter are in the village papers. This hal hasilee tenure, so far as rates on various crops go, is that I imagine on which lands were originally held all over Bengal.

As the villages got more settled, measurement was neglected. If the Mustajir (Dharampore was formerly mostly held in mustajir) measured a holding and found the jumma less than the ryot had been paying, what fell short was added as " kum kast." One would think the ryot would have claimed the decreased assessment, and so he would had he been dealing directly with the zemindar; but the mustajir would represent to him that by still paying the original amount, the jumma would become intact, strengthening or creating or tending to create a claim to holding for 20 years at a uniform rate. Thus the mustajir took this kum kast as a favour in the ryot's own interest to the injury of the zemindars. He had salamee, kurcha, and what not over and above. Circumstances

have very generally changed the hal hasilee into one average rate—an illustration of how custom works;—but the ryots frequently hold to the old arrangement as proof of the different rates which they should be called on to pay for the various crops sown. This shews that the old custom of charging on crops is recognised and understood. It could no doubt easily be generally introduced and would help to fix a proportion of gross produce as a limit to assessment. Although it may be difficult to get at the quantity of crops, certainly the land under each crop can be ascertained.

PART II.

CONSTRUCTION.

The Commissioner when here said he had been overwhelmed with *de*struction, but nobody offered him *con*struction Destructive criticism may be negative construction, but no doubt it is much easier than positive constructive suggestions. Allowing then some legislation to be necessary—on what lines, do I think it should run, I will tell you.

2. There are certain broad principles that should I think be recognised—*1st*, the resident cultivating ryot's heritable right of occupancy, conditional on payment of a fair rent; *2nd*, the need of a limit to assessment, which will leave the ryot of a moderately-sized holding a margin beyond what is necessary for rent and bare subsistence; *3rd*, the zemindar's proprietary right, conditional on payment of a fixed Government revenue as guaranteed by the perpetual settlement; *4th*, necessity of co-operation with the zemindars in any plans for the bettering of the ryots; *5th*, in the attainment of that end, encouragement of private contract between zemindar and ryots; *6th*, discouragement of litigation; *7th*, means of speedy and punctual realization by the zemindar of his rent.

3. The ryot's right of occupancy was certainly recognized by the Hindu and Mahomedan Governments of India. I think the provisions of the perpetual settlement recognise it, as also the duty of Government to protect him from such an assessment as does not leave him a margin, not only to pay his rent and barely live, but to lay by for bad seasons and for the comfort of his family beyond bare subsistence. He should sit at a fair rent. Tenureholders who hold merely for the collection of rents may be left to the rights secured by their contracts or other documents. Rack-renting should be discouraged. To guide in the settlement of a fair rent among other rules as guides a limit of proportion of the gross produce of the soil might advantageously be fixed, beyond which the tenant should not be assessed. This is the simple rule which guided the old native Governments, and is still recognised by the ryots as just. But the proportion limit will not apply to small holdings. Simple calculation will shew that the produce of a holding of two and three bighas will not suffice for the subsistence of a family and payment of rent. It may be well for the ryots to cultivate a small plot of land, but its produce must be supplemented by the returns of outside labour. In this case the prevailing rate in the neighbourhood might regulate the rent. It can easily be calculated where the proportion of one-fifth of the gross produce, or whatever may be fixed on, can be rightly applied.

4. It is admitted that difficulties exist in fixing a proportion They are ably pointed out, in paragraph 10 of the Government of India's letter to the Government of Bengal, No. 784 of 5th May 1884; but I do not think they are insurmountable. Of course the Government of India's letter ignores the greatest difficulty which lies in the ruling principle of the Tenancy Bill, viz. distrust of the zemindar. Section 41 of chapter 5 in the revised Bill is a great improvement on section 59 in the old Bill, inasmuch as the Government revenue officer is dispensed with, if indeed section 117 does not annul what section 41 grants; but the sub-clauses *a*, *b*, and *c* of clause 1, section 41, are vexatious, and the suspicious spirit runs, more or less, throughout the Bill. The exchange of registered pottahs and kabuliyats should be insisted on, which of itself would be a record of rights. As a rule it is to the interest of both zemindar and ryot (almost *always* to that of the zemindar) that the term should be long. To compare great things with small, constant change is as injurious to peace and quietness of landlord and tenant life as constant worrying legislative change is bad for the country at large. As regards information whereby a proportion of the value of the gross produce may be got at, I do not think that with the co-operation of the zemindar it would be very difficult to get at it. Under the Mahomedan Government, notably under the Emperor Akbar, with the help of his great Financier Todermull, it was not found so. The canungo worked with the ryots under circumstances more unfavourable to the compiling of trustworthy statistics than would exist now in working with the zemindar and ryot. Between the decay of the Mahomedan dynasty and the rise of British power, the mustagiry farming system came in, on which the perpetual settlement of Bengal with the zemindar has certainly proved a great improvement. The Government should strengthen rather than weaken the zemindar. The aim should be to work with him; educating, coaxing, rewarding, punishing, as may be required. It is idle to talk of oppression. The law should be strong enough to prevent it. It may be that the zemindar would not welcome an attempt at the reintroduction of anything like the old system; but the zemindars would be wise to look facts and the times in the face. Feudal power is of the past. Let them frankly recognise that their and the ryot's interests are one, and heartily co-operate in plans to protect and enrich the ryot. Whatever may be the proportion of the produce of the land left to the zemindar, it will rest with them to enrich themselves by increasing its value by

introduction of new crops, improved methods and implements of husbandry, assisting in opening up communication, &c., &c. No doubt it is hard to expect the co-operation of the zemindars when you are worrying, goading, and despoiling them. So pray lift up your voice in the approaching conference that this impolitic action may be dropped. Nevertheless, it is I fear a choice between hearty co-operation with the Government in elevating the agricultural masses and utter spoliation. The latter, while it is ruin to the zemindar, will bring also serious danger to the Government: the former peace, good will, and prosperity all round. To return to the question of needful statistical information. Not long ago I heard an experienced district officer—you know him—suggest that the canungo might be a joint officer of Government and the zemindar, paid by both, with fiscal (the village putwaries being under his control) and certain executive and judicial duties. Such an officer giving status to punchyets, of whom he might be chairman, with summary powers, might be very useful. If possible his humble court should be kept free from the bochas and geeds of the courts. In calculating the value of the produce of the land, of course *all* crops should be taken into account. I have gone into this on the *destructive* portion of this letter, especially as regards paragraph 13 of the Government of India's letter.

5. Regarding the modes of enhancement proposed in the Bill, they would I think all come under the proportion of gross produce limit scheme. Tables of prices and various other statistical information would all be useful if not absolutely necessary.

It must be borne in mind that small holdings will not come under the proportion limit They might theoretically; but in practice the petty holding ryots would no doubt come off better under contract with their zemindars than under the provisions of the law, which might in application sometimes partake more or less of the heartlessness of political economy. I do not think it can be denied that very small holdings are not favourable to the comfort and advancement of the agricultural masses. There is undoubtedly a limit in the size of holdings below which agriculture will not yield subsistence to a family. All the numerous provisions and restrictions regarding enhancement, &c, &c., are I think useless. No state of society could long endure such interference. The law would be either a dead letter with exceptional spurts of executive, unjust if strictly legal, action, or the people would rise to throw off the insupportable tyranny. Certainly the zemindars would not, if they had the chance, display the loyalty—passive if you like—which they did in 1857.

3.—The Zemindar's proprietary right.

6. The perpetual settlement undoubtedly conferred proprietary rights on the zemindars. Nothing but the most clearly proved necessity for the general good could justify its infringement. This Bill bristles with provisions which invade their rights. Generally and in detail, in the spirit and in the letter, it deprives the zemindars of rights conferred on them by the perpetual settlement of 1793, especially in the transfer provisions and in the 20 years' presumption. Protection of the ryot can surely be secured without such wanton breach of faith.

7 It may be admitted that the ryots need protection; that it is right to legistate on their behalf. If the zemindars have encroached on their rights, whose fault is it? Surely more that of the Government itself than of the zemindar. This being the case, fair play, if not some consideration, surely should be shewn to them If things had come to such a pass, and abuses had sunk so deeply into the system that they must be violently cut out, it might be necessary to cut them out. But this is not the case. Admittedly legislation was needed as much on behalf of the zemindars as of the ryots. Is it not worth while to encourage mutual good feeling between landlord and tenant rather than the bitter hostility engendered by this Bill? The great object of securing the ryot from overassessment is admittedly to be most easily gained by statistical information, which it is quite clear can be best and most cheaply obtained by co-operation with the zemindars. Rather than fix a barrier between them and ryots; rather than change their loyalty into disaffection to the Government; would it not be wise to see what can be done by some sympathy with *their* troubles, and by acting in co operation with them see if it is not possible to work out some plan by which village statistics may be compiled and recorded, embracing tables of prices, records, rights, &c. &c? By pure Government agency this will never be done. Government know well how necessary all this is for efficient administration. Instead of utilizing the most valuable agency in the country, they deliberately alienate it.

5.—Encouragement of private contract.

8. A Tenancy Bill should encourage mutual arrangement between landlord and tenant, reserving only, as being outside contract, the occupancy right of resident cultivating ryots so long as they pay a fair rent. The exchange of pottahs and kabuliyats should be insisted on. Provision should be made for good and sufficient duplicate receipts for rent. The courts would have the power of deciding as to the fairness or otherwise of rent demanded; but this not arbitrarily, but under certain general rules for guidance, the principal one being a proportion of gross produce being the limit of assessment.

6.—Discouragement of litigation.

9. If all rent arrangements were left to the zemindar and ryot, there would be a minimum of litigation. Rent cases should be tried by experienced officers with one appeal only to the High Court. Circuit native officers might assist the lower court in collecting information on the spot, those again being helped by punchyets of head ryots. There would, it may be hoped, be few legal decisions, but carefully given they would form precedents and rule contracts over considerable areas, and the decisions would soon form a useful body of case law. Instances of oppression, abuse of distraint or infringement of the ryot's occupancy right would be duly punished.

7.—Assistance to zemindars.

10. Nothing, I think, would be more likely to maintain good relations between zemindar and ryot than the obligatory exchange of duly registered pottahs and kabuliyats. Where ryots are averse to pottahs, it is generally from some bad motive. The desire to overreach is not all on the zemindar's side. Sometimes there may be fear that the occupancy right will cease with the term of the pottah. Such fear should be removed by a simple provision bestowing or confirming occupancy right on every resident cultivating ryot paying a fair rent. At the end of the term in 99 cases out of 100 probably a new lease would be amicably settled. If not done within a certain period, say, three or six months, the courts might be empowered to settle the rate: period not to be less than five years, but as far as ten, both parties being willing. The law should make clear duplicate rent receipts obligatory, arrears always taking precedence of current rent. As Government takes rents punctually by sunset of a certain day in four kists from the zemindars, with the penalty of the forfeitures of estate for default, so should the ryot pay punctually in four similar kists, 20 days before the zemindar's kists fall due. If the dates do not suit the reaping of the crops, the pottahs can fix suitable dates.

11. Distraint on the standing crop without interference of the court should be allowed for arrears. Notice that distraint was about to be enforced being filed in court by the zemindar with the ryot's account. Should it subsequently prove that the zemindar had abused his right, he should be punished: the subordinates by simple or rigorous imprisonment: the zemindar by substantial fine. In case he was personally cognizant of the abuse; also by imprisonment; and compensation should be made to the ryot. If the sale of the crop did not liquidate the ryot's arrears, interest from due date at 12 per cent. should be charged. Suits for arrears should be brought within one year succeeding the year in which they became due. The pottahs and the rent receipts would be evidence, and a summary decree should be passed, procedure being similar to that under the Court of Wards and Government khas mehals. When the arrears with interest amounted to one year's rent the defaulter should be liable to ejectment if the amount were not paid within three months of date of decree, which decree should carry notice of ejectment, and no further legal process should be necessary. The ejected ryot should be allowed to remove or sell any buildings had erected on his homestead within 30 days of ejectment. A punchyet of ryots should fix the price, or, if the ryot wished, a public auction sale might be held by an officer of the court, who would bepiad by a fee to be deducted from the proceeds.

12. I have only in the first part of this letter noticed the points mentioned in the Bengal Government circular. The revised is in all essential principles much the same as the original Bill, though it contains important modifications. My views on the latter are given in a series of letters signed E in the *Englishmen* newspaper of the following dates:—

I, 26th	October	1883.	VI, 1st	December	1883.
II, 2nd	November	„	VII, 6th	„	„
III, 9th	„	„	VIII, 14th	„	„
IV, 16th	„	„	IX, 21st	„	„
V, 22nd	„	„			

My opinions have been carefully considered They are the result at least of considerable experience extending over upwards of forty years, nearly all of which have been spent in the interior of Bengal, and in constant intercourse with natives of all classes.

I am not a partisan. I desire first the well being of the millions; but I think that this can be obtained without destroying the rights given to the zemindars by the perpetual settlement of 1793. I think the Bill politically dangerous and that it contravenes recognised principles of legislation. A Bill founded on the principles named in part II of this letter, would I think be more practical and more just.

No. 640G, dated the 21st July.

Memo. by A. Weekes, Esq, Collector.

Forwarded in original to the Commissioner. This came too late for me to make use of, but in many things I see Mr. Eddis agrees with me.

Remarks of BABOO SURJA NARAIN SINGH *on the revised Bengal Tenancy Bill, with reference to the circular of the Bengal Government, No.* 3 *T—R, dated the* 24*th May* 1884, *forwarded to the Commissioner of the Bhagulpore Division, in acknowledgment of his letter No.* 817*R, dated the* 29*th May* 1884.

CHAPTER II.

1. *Paragraph* 4 *of Bengal Government circular.*—I do not think that the presumption in section 5 (5) is with reference to existing practice a fair presumption. It ought to be omitted. In a letter, dated 9th September 1880, which I addressed to the Commissioner, and which is published at page 77 of volume II of the report of the Government of Bengal on the proposed amendment of the Law of Landlord and Tenant, published in 1883 (*vide* paragraph 3 of the letter), I pointed out the objections to a similar enactment proposed by the Rent Commission These objections were also approved of by Mr. Reynolds who took up the suggestion made by me as to the means of ascertaining whether, in any disputed case, a holder of land was a ryot or tenureholder (*vide* volume I of same report, page 185). For facility of reference copies of my and Mr. Reynolds' observations are annexed. I may explain that some of the objections taken by me on the former occasion would not apply to the provision now intended to be laid down, for instance, the one based on the difficulty about enhancement, and it may also be said that the present rule is one of rebutable presumption; but on consideration it would be seen that the course pointed out by me in paragraph 3 *h* of my letter is the only reasonable course to adopt to ascertain whether a holding is a ryoti one or a tenure. The conversion of the subletting occupancy ryot into a tenureholder (section 37) is not in my opinion a workable provision, and is not likely to secure the object for which it was devised. It will be nobody's interest to bring to light cases of such subletting apart from the other manifold objections that apply to the provision Will the landholders be deprived of the right of escheat which they now possess in respect of converted tenures? By the act of the tenant the old relation between him and his landlord is changed, and the rights of the latter are controlled in a manner which is opposed to custom and law.

CHAPTER III.

2. *Paragraph* 5 *of Bengal Government circular.*—I would, in connection with this chapter, invite your attention to what Mr. Kristo Das Pal has said in his minute of dissent (see page 242 of the Supplement to the *Calcutta Gazette* of 16th April 1884 under head tenureholders). I do not see any necessity for or the expediency of re-casting the law relating to tenures and undertenures and introducing changes, the object of Government being to improve the condition of the actual cultivators and not of the middlemen. The existing law as to tenures should only be re-enacted without the introduction of any change affecting the rights of any class.

CHAPTER IV.

2. *Paragraph* 6 *of Bengal Government circular.*—There is no doubt that the rule of 20 years' presumption is not only a hard one to the landlord, but it has given an undue impetus to litigation, and has introduced a good deal of demoralisation among the tenantry class. It is thought that the zemindars should experience no difficulty in rebutting the presumption when pleaded or relied upon if it is rebutable; but zemindari papers are not in most cases credited in the courts, and auction purchasers in many instances are unable to produce them. Mr. Gibbon has given very good reasons against the retention of the presumption on the Statute Book. It should be relaxed, and the year 1839, or 20 years before the passing of Act X of 1859, as had been originally proposed by Mr. Reynolds, should be taken as the time from which the presumption might start. The transformation of ryots holding at fixed rates into tenureholders in undesirable. What about the right by escheat and by desertion which the landholders now possess in such holdings?

CHAPTER V.

4. *Paragraph* 7 *of Bengal Government circular.*—The definition of settled ryot is justified on its being based on the analogy of rights held by khudkast ryots, but it can be easily seen that there is not much analogy between them. The occupancy title accorded to a settled ryot should not extend beyond the limits of the village in which he has acquired that status. There are many estates in this district, the lands of which lie very far, and in several cases in two districts and more than one sub-division. Villages forming an integral part of a single estate are held by different proprietors for half a century or more. It would lead to much complication if a ryot having acquired the status of a settled ryot in one of such villages were to be invested with occupancy title in land situate in another village belonging to a different proprietor many miles off. A khudkast ryot was he who tilled land in the village where he resided. He could not claim to be a khudkast ryot of the neighbouring village according to customary law, although the land in it might border his own lands in his own village. The existence of a common towji did not affect the question in any way. Why should a different state of things be introduced now and an unreasonable latitude

allowed in the acquisition of the occupancy title? Act X of 1859 introduced a period of prescription for the acquisition of the occupancy title. Mere residence without any period of prescription did not, according to the generally accepted common law of the Lower Provinces, confer a right of occupancy, and for this as well as to benefit the *paikhast* tenants who were always tenants at will according to custom Act X for the first time prescribed 12 years' occupancy as the shortest occupation which could confer a prescriptive title to occupancy. It is now proposed that a person having once acquired the status of an occupancy ryot should carry it along to lands which he may not hold for the necessary period; but is it consistent with the historical development of the right of occupancy that it should extend over the entire estate? I am also not in favour of increasing the ambit of the estate by going back to any period in the past. I do not think the reduction of the area of estates by butwara is any reasonable ground for widening the extent of the acquisition of the title of occupancy, either by attaching it to the estate as it may exist or as it existed at any period in the past Section 26, clause 2, introduces a new rule of presumption which is not a fair one. It is said that one of the advocates of the zemindars (Mr. Kristo Das Pal) admitted in Council that 90 per cent. of the ryots have acquired the occupancy title, and therefore the presumption sought to be created is a reasonable one. Apart from the question whether the percentage mentioned is accurate or not, it is well-known that ryots abandon and desert their holdings, and that in *deara* and *chur* lands, in border tracts, and on the banks of the Koosi there is no fixity of tenure Ryots move about most freely, and it is certainly a hardship on the landlord if he should have to discharge the burden.

5. *Paragraph* 8 *of Bengal Government circular.—Section* 31 (*b*) —Improvements are not generally made by tenants. The landlord should have the preferential right of making them.

Section 31 (*f*) —While the creation of the right of transfer is objected to by the zemindar, as he would have no control over the introduction of tenants into his property, it is a matter for serious consideration whether it is expedient to grant the right knowing how improvident ryots are. There is very little doubt that the effect of the provision would be the improvement of many ryots off the face of the country, and the introduction of mahajuns in their place. What is going on in the Sonthal Pergunnahs would be repeated elsewhere. Bequeathing by will is an entirely new feature in the incidents of occupancy right.

Section 31 (*a*) —I think the subsection should state that the tenant should use the land only for the specified purposes of the tenancy and not in any manner inconsistent with or opposed to it.

6. *Paragraphs* 9, 10, 11, *and* 12 *of Bengal Government circular.*—The first ground of enhancement provided for in section 43 should not be omitted. It is on the Statute Book ever since the time of the permanent settlement in some shape or other, and is in accordance with the custom of the country. The objections urged to its retention are not such as ought to prevail considering the reasonableness of the ground and the advantages both to landlord and ryot of continuing it An appeal to this ground precludes the necessity of entering into detailed calculations consequent upon the application of the other grounds. In a discussion of the grounds and extent of enhancement, the customary system of letting land, and the customary mode of agriculture, ought not to be disregarded. When uncultivated land is first let out, a low rent is either fixed or no rent is charged for one or two years. The rent is gradually increased as the capabilities of the land develop, until the maximum village rate for land of the description is reached. Under this system the tenant is reimbursed for extra labour or capital used by him in the cultivation by the lowness of the rate which he enjoys for several years. The Bill ought to recognize and give effect to this custom. The first ground of enhancement is only available to the zemindars for enhancing rent in such cases as well as in those cases where the rents of particular ryots may be lower than those of the generality of them on personal or other grounds, but fettered as it is with restrictions, it can hardly give him the full amount of enhancement to which under ordinary practice he may be entitled One can understand the objection to enhancement *per saltum* after the full village rate is reached, but any provision which would deprive the landlord of the benefit of the full rate in cases referred to above are neither reasonable nor fair Similarly, in *dearas*, where the land is sandy, a low rate is fixed, but in the next year, or in two or three years, the land is quite changed, and the full rate is levied. I am afraid the limitations on enhancements prescribed in the Bill would cause injustice to the landlords in such cases, unless adequate provisions to meet them are laid down. I am aware of the provisions contained in sections 212 and 213 of the Bill, but I do not think them to be sufficient for all purposes.

7. The restrictions on enhancement laid down in sections 41, 44, 45, and 47 are not fair to the landlord who is deprived of the full amount of enhancement, although he may be entitled to it It should be the object of wise legislation not to force parties who stand in the relation of landlord and tenant into court to adjust questions of rent and other cognate questions, and every facility ought to be given for their adjustment by mutual agreement. The Bill however, is so framed that at every step of their dealings landlords and tenants have either to appear before the revenue authorities or the civil courts. If enhancement out of court be not allowed to take place to the same extent as it is permitted through court the result will be constant resort to litigation, and such a consummation is neither good for the ryot nor the landlord. I do not apprehend any danger of the kind contemplated in paragraph 11 of the Bengal Government circular from the provisions contained in section 42 (1) of the Bill. In the first place subsection I is controlled by subsection II, and in the second place there is already so much diversity in the rents of occupancy ryots,

as is clear from the admission, that except in limited tracts of Bengal a prevailing rate cannot be found to exist ; that there is no *a priori* ground for holding that section 42 would have any very disturbing influence on the economy of rents in this country. Zemindars are now at liberty to settle new lands with settled ryots at any rate of rent they may choose. When such is the case, I do not see why his power in this respect should be restricted when land, which has been previously held by a tenant at a money rent, is let to a settled ryot of the village or estate in which it is situate. The circumstances of this district are not such that there is any danger of intricate and costly litigation resulting from the introduction of the provisions occurring in section 42.

8 With rare exceptions bastu lands are generally separate from jote lands, and in a majority of instances no rent is charged for them. The ryots have not any rent-free title to them ; the lands are *mal*, but certain castes are excused from the payment of rent, and other castes who have jote lands in many zemindaries pay rent for homestead lands also. There is no uniform rate throughout the district ; the practice of charging rent is a varying one. A ryot by relinquishing jote land does not vacate his homestead land. He may continue to occupy it as before, and he has not to pay rent on ceasing to be a cultivator if he was not paying it before. On leaving the village, the land is the zemindar's, who is free to do with it what he may choose, the tenant possessing no right of transfer or bequest. I do not think the ryots themselves would like any change in the system as it exists It is no doubt competent to the legislature to take away the rights of one class of the community and make them over to another, but one hardly sees the propriety of the proposal to deprive landholders of the benefit of an increase in the value of land by fixing the rent of homestead lands in perpetuity, and creating, so to say, a mokurari title in favour of the tenant, contrary to established and ancient custom. The raising of homestead lands above flood level or any other improvement of them affected by ryots are not of such a character as to entitle the tenant to the privilege of holding at a non enhanceable rent.

9. *Paragraph* 13 *of Bengal Government circular.*—The provision made in section 51 for reduction of rent does seem to cover all cases that would arise with reference to the actual facts existing in this district It would be impracticable to provide for the operation of any cause tending to deteriorate the quality of the soil until the effect produced by it is visable in a pronounced shape, and when such should be the case the ground of reduction would, in my opinion, apply. With reference to commutation, it will be remarked that if an average extending over a sufficiently long number of years be taken both as to produce and value of it, the risk and burthens referred to by Mr. Reynolds would necessarily be discounted, and no further allowance is required to be made The average rent which the landlord has received should not in such a case be governed or over-ruled, so to say, by any consideration of the prevailing money rents.

10. With regard to section 64 (3) it is necessary to point out that as the presumption of 20 years is applicable to produce rents, it is worthy of consideration what the effect of commutation (section 53) at the instance of the tenant, or at the instance of the landlord, would be on the power of the latter to seek enhancement in the future. A tenant applies for comuntation, but the zemindar is not willing that the produce rent should be commuted in money. The prayer is however, granted When produce rent was paid the landlord used to benefit to the extent of his share by an increase in produce as well as by an increase in prices. The commutation having been made on the basis of prices and produce as obtaining in the past, would the landlord suffer for deterioration in the value of money through the commuted rent being deemed to be non-enhanceable in future, or would an enhancement be permitted? If the produce rent had not been commuted, the landlord would have reaped the benefit of increased prices and increased produce He should not lose this benefit because the grain rent has undergone commutation in money.

11. *Paragraph* 14 *of Bengal Government circular.*—No reliance can be placed on the price lists In the first place they are not accurate, and in the second place they do not refer to all the local markets. The task of verifying them now would prove a Herculean one, and it would be unsafe to act on price lists so prepared and framed.

12. *Paragraph* 15 *of Bengal Government circular.*—To regulate rents with reference only to the prices of staple food-grains would be to upset the whole basis of adjustment of rent as it obtains in this country. By universal custom higher rents are paid for lands on which more valuable articles of produce are grown. Lord Cornwallis, in one of his minutes, prominently referred to the cultivation of the more valuable species of produce as a principal means of raising the rents of land in Bengal and Behar, as the following quotation from the fifth report, page, 616, will shew :—

"The rents of an estate can only be raised by inducing the ryots to cultivate the more valuable articles of produce and to clear the extensive tracts of waste land which are to be found in almost every zemindari in Bengal." Minute dated 3rd February 1790.

Moreover, sugarcane and some other valuable articles are produced on lands yielding staple food crops, and the demand for them in the market induces the cultivator to grow them more largely than in ordinary years For instance, sugarcane is produced both in land where rice is produced and in land in which cold weather crops are also produced.

Extract from letter of BABOO SURJA NARAIN SINGH *to the Commissioner of the Bhagulpore Division, dated 9th September* 1880, *referred to in paragraph I of the remarks on the Tenancy Bill.*

3. I do not agree in the propriety of enacting section 11, and in this view I think the definition of ryot given in section 3 ought to be amended. The object apparently is to protect actual cultivators who hold under large jotedars, such as exist in Rungpore, and under howaladars, &c., that are found to exist in Backergunge and other districts. It is also probably intended, I think, to encourage the system of *petite* culture. I dare say there is probably some custom in Rungpore and other parts of the country where these large jotedars exist, regulating the status of the holders of them in relation to actual cultivators and intermediate tenants; but if it does not exist, the subject can be provided for by special laws of local application; but there is no reason why throughout the provinces of Bengal and Behar a ryot holding more than 100 bighas (standard) should, against his will and that of the landlord under whom he holds, be converted into a middleman. Whether *petite* culture is preferable to large cultivation in this country is probably a moot point. At any rate no case has yet been made out for the Legislature to step in and encourage the one as against the other. If we have both side by side, we may hereafter be able to judge of their merits, and as a large number of occupancy holdings in these provinces is probably less than 100 standard bighas, there is no special reason for interfering with those that exceed that quantity.

3(*a*). The limit of 100 standard bighas is too low. A Hindu living under the joint family system is quite able to cultivate, by the members of his family or by servants or by hired labourers more than 100 bighas, and Indian Mahomedans are also amenable to that system. The ryots who in this district hold more than 100 bighas (standard) by a single demise do generally cultivate in the aforesaid manner. I know of many cases where ryots hold lands in several villages because they are unable to find enough in their own, and the total quantity thus held would in great many cases much exceed 100 standard bighas. This shews that the assumption that a ryot cannot well hold more than that quantity without the risk of subletting is not well founded on fact.

3(*b*). Occupancy holdings at present revert to landlords on the ryot dying without heirs, and under the provisions of the Bill they would continue to do so, excepting those that may exceed 100 standard bighas, which, under section 11, being converted into tenures or undertenures, would escheat to Government. This would be an infringement of vested rights.

3(*c*). If a tenureholder, made such under section 11, should have no sub-tenants under him, and should cultivate himself the whole of the lands, what will be the standard of enhancement under section 9? If a reasonable rent be calculated, and a profit not exceeding 30 per cent. be given to him, it is not easy to foresee whether his position would be bettered or made worse. It depends on what is meant by reasonable rent. Does it mean rent paid by occupancy ryots holding under tenureholders of this class, or rent paid by occupancy ryots of the class from which he was raised to the position of a tenureholder, or that paid by sub-occupancy ryots or tenants-at-will?

3(*d*). The provisions of section 11 will greatly increase the middlemen class. In this district sub-infeudation is not so general and does not go so far down as in some districts in Eastern and Central Bengal. Generally speaking the cultivators here come after the zemindars. In some zemindaries there are farmers and under-farmers, but their interests are temporary. In Mahalat Kharakpur, belonging to Raja Leelanund Singh, owing to exceptional causes, mokarraree taluks are pretty abundant, and in pergunnah Harawat there are some putni tenures, but they are exceptions to the general rule. It will be very undesirable to foster and create middlemen where they happily do not exist by the mere force of legislation. Instead of subserving the true interests of the country, I am afraid the measure proposed will have an opposite result.

3(*e*). It is well known that a petty landlord is a much greater rack-renter than a big one. The occupancy ryots transformed into middlemen by legislation will prey more upon the next lower class. Section 9 will tend to make their rents easier in time than it would have been if they had remained ryots, and with it there will be a temptation to give up cultivation altogether and act the *rôle* of a middleman pure and simple. On the other hand, zemindars will refuse to let more than 100 bighas for fear of the creation of tenures under section 11, and ryots who can well afford to cultivate more than that quantity will go without land.

3(*f*). Landlords will suffer loss, as by the rules of enhancement applicable to occupancy tenures they get more than by those governing enhancement of tenures and undertenures, and there is no guarantee that the actual cultivator will benefit.

3(*g*). There is no object gained by the measure when, under section 19, there may be a class of sub-occupancy ryots. It is all the same whether a ryot holding less than 100 standard bighas sublets, or whether one holding more than it sublets. It is true there is more probability of the holder of the larger quantity subletting through inability to cultivate the whole, but the same may happen with the ryot who has the lesser quantity also. Legislation should interfere as little as possible with the economy of the growth of tenures of land; if officiously applied, it may in the end lead to unforeseen mischievous consequences.

3(*h*). If legislation regulating the extent of an occupancy ryot's holding be deemed necessary, the limit of 100 standard bighas ought to be considerably raised; but I think

the difficulties felt in the districts of Rungpore, Backergunge, &c., may be met if the definition of ryot be amended a little and framed to mean only "a person who holds land or who occupies and cultivates land, if such person or his predecessor in title was originally let into possession of such land for the purpose of cultivating it by himself, on by the members of his family, or by servants, or by hired labourers, or partly by some or partly by others of these persons," and a few explanations be added shewing that, in determining whether a person is a ryot or a middleman, the court will have to ascertain the purpose above indicated, and that in order to do so it should have regard to—

(1) The description given in the original contract of letting, if any exists;
(2) The description given in the receipts as ryot or middleman;
(3) Any local custom bearing on the question;
(4) Whether the person now in possession of the land whose status is sought to be determined, does or does not cultivate as aforesaid the whole or a reasonably large portion of it;
(5) Whether the area as it was originally or as it is now, if compared with the area of holdings in the locality or at a reasonable distance from it, cultivated as aforesaid by other persons, reasonably leads to the inference that it could not have been a royt's holding;

and if there are no sub-ryots, or if a reasonably large portion of the land is cultivated as aforesaid by the person in question, and there be nothing in the contract or receipts or local custom necessarily to lead to a contrary result, he shall be adjudged to be a ryot; but if there are sub-ryots and reasonably large portion of the land is not so cultivated as aforesaid, and test No. 5 should be unfavourable to his being considered a ryot, then notwithstanding that tests 1, 2, and 3 may be in favour of his being considered a ryot, he shall be adjudged to be a middleman, *i.e.* a tenureholder or under-tenureholder as the case may be.

3(*j*). The decision of the question on the above basis does not impose on the Legislature the task of arbitrarily fixing a limit: it gives free scope to contract and local custom, and only controls both when the circumstances of the case would lead to a different conclusion. The question is well worth your and the Legislature's consideration if the Bill be presented before the latter in its present shape.

3(*k*). The rule of enhancement laid down in section 9 is open to grave objection, as it may not under certain circumstances give any enhancement to the proprietor or zemindar, the margin of profit allowed to each successive tenureholder leaving nothing for him.

Thus if A be the zemindar who has created a tenure at Rs. 500 yearly rent in favour of B:

B an undertenure of the first degree in favour of C at Rs. 700 rent:
C an undertenure of the second degree is favour of D at Rs. 1,000:

The gross collections from ryots to have been Rs. 1,500, but since raised to Rs. 2,000.

In this case, deducting collection charges at 10 per cent. from Rs. 2,000, balance is Rs. 1,800, and 30 per cent. of it is Rs. 540: balance Rs. 1,260, which D would pay to C as enhanced rent.

C would pay, deducting collection charges at 10 per cent. on Rs. 1,260=Rs. 126, and 30 per cent. on the balance as profit to himself=Rs. 340, leaving out fractions, to B Rs. 793, who would similarly pay to A Rs. 500 (collection charges=Rs 79, leaving out fractions, and profit Rs. 214). A gets no increase, although the rental increased by Rs. 500, and the intermediate persons received more or less increase.

Extract from the memorandum on the Rent Bill by Mr. H. J. Reynolds *(on special duty), page 185 of volume I, Report of the Government of Bengal on the proposed amendment of the Law of Landlord and Tenant in that Province.*

"The really valid objections to the principle of the measure lie on the surface. It is an arbitrary rule, overriding custom and contract, and placing a number of persons in a position which they never desired or intended to fill. It trenches upon the rights of the zemindars by creating tenures without their consent. It cuts the knot instead of untying it, and sets aside the present law and existing engagements in order to provide for a class of cases which cannot after all be very numerous.

The Government cannot fail to be struck by the fact that, while the zemindars, whose receipts would probably be increased by the adoption of the section, have thus far declined to give it their support, it is regarded with no favour in those parts of the country for which it was supposed to be specially required. In the divisions of Dacca and Chittagong not a voice has been raised in its behalf, and it is alleged that in Rungpore its introduction would lead to consequences prejudicial to the economic interests of the district. The section has accordingly been omitted from the Bill. But as the want of some rule for the guidance of the courts in determining whether a tenant shall be considered to be a ryot or a middleman has been practically felt, a section has been inserted (as suggested by Baboo Surja Narain Singh) in the procedure portion of the Bill, indicating the principle by which the courts should be guided in determining the above question."

Remarks on Bengal Government circular No. 37—R, dated 24th May 1884, *by* BABOO SURJA NARAIN SINGH, *in acknowledgment of the letter of the Commissioner of the Bhagalpore Division, No.* 817*R, dated 29th May* 1884.

CHAPTER VI.

13. *Paragraph* 16 *of the Bengal Government circular.*—It is very difficult to see how, having due regard to the just interests of the landlords, the growth of the occupancy right can be facilitated. This policy can only be carried out by trenching upon the just interests of the landlords. A right of occupancy, such as the Bill proposes to create, is a substantial right of property, and every facility given by the law for its creation against the will of the landlord, where it does not exist, cannot fail to affect the just interests of such landlord. If the legislature considers that every ryot should have a right of occupancy at the sacrifice of rights held by the landholders, it would be more candid to give them the right in plain terms than to lead to its creation by legal devices which would foster litigation. Neither the provisions of chapter VI of the present Bill nor those of the original Bill relating to non-occupancy tenants have the recommendation of being just to the landlords or satisfactory in their results. If under-ryots having no rights of occupancy can be tolerated, one does not see why there should be such a great effort made to promote all non-occupancy ryots to the status of occupancy ryots by means of doubtful provisions such as the Bill contains. The non-occupancy ryots are gradually attaining the position of occupancy ryots through the supineness of the landlords, and it is hardly necessary for the legislature to interfere and enact a law for that purpose at the risk of appearing to deprive the landholders of the rights they now possess, more specially when the definition of a settled ryot would tend to limit the circle of non-occupancy ryots very much. The proposal of the Bengal Government to equalize the rates of occupancy and non-occupancy ryots is opposed not only to the entire scheme of the Bill, but runs counter to the policy which underlies the Rent Law of 1859. That law divided ryots into two main divisions, not only in reference to protection from ejectment, but also in reference to rent. The legislature then adopted a certain principle, and if it was in breach of the constitutional principle which is relied upon by the Bengal Government, the new principle has at any rate had operation for a long series of years. If, however, we are at liberty to refer to any old constitutional principle, it cannot with accuracy be said that the principle contended for is universally correct. It is a matter of history that in many parts (*see* Hunter's Orissa) of the country the rates of the khudkast ryots were in excess of those of the paikasht tenants; in other parts the reverse was the case, and in some parts there was equality of rates of both. To deduce a particular principle of general application on the basis of such facts, and to legislate on it, would be certainly erroneous, unless statistics were forthcoming to shew that equality of rates was the rule, and the others were exceptions. In other parts of India, the Legislature has recognised a distinction in the rates of the two classes of tenants, and the occupancy tenant has been allowed the privilege of holding in some province at 12½ per cent., and in another at 15 per cent., below the rates of non-occupancy tenants.

14. The produce maxima of the original Bill are open to so many serious objections that the percentage standard of enhancement laid down in the present Bill may be said to be a decided improvement, though it is not free from blemishes. The present standard is by no means so arbitrary as the produce maxima which had nothing for their foundation, but the *ipse dixit* of the proposer. I have already stated that legislation is not needed in respect of non-occupancy ryots; if the legislature should deem interference to be necessary, then the chapter ought to be modified, and some simpler rules enacted. Do not the provisions of sections 56 and 61 clash a little with those of section 57? The Select Committee say that there is no limit to enhancement by registered agreement, but this ought to be clearly laid down. The word ryots in section 60 (9) is intended for non-occupancy ryots; if so, it ought to be specified. The limitation of 50 per cent. in the said sub-section does not appear to be reasonably fair.

CHAPTER VII.

15. *Paragraph* 17 *of Bengal Government circular.*—I do not consider that the provisions of section 37 are workable. The provision of sections 38 and 62 will remain a dead letter in practice, and subletting will not be checked.

CHAPTER VIII.

16. *Paragraph* 18 *of Bengal Government circular.*—I have already discussed the propriety of the presumption clauses, and of preventing enhancement on commutation in case of produce rents. Instalments (section 67) should be according to contract; if there be no contract then by local usage: the interference of the local Government is not called for and is not desirable. The rules regarding the grant of receipts and statements of account (sections 70 and 71) are somewhat cumbrous, cannot always be complied with, and will not in practice be complied with. Petty lakhrajdars, pundits, and many others own small bits of land which are let out to ryots. It is not likely that they would comply with the rules, nor can they be followed in *bhaoli*, and in those cases, such as *utbandi*, *hal hasilee*, *sirbudi*, *hustabudi*, &c., where the annual rent is only ascertainable on measurement every year or at the end of every harvest. In my opinion the law in this respect should not be com-

pulsory, but only permissive, and some advantages ought to be held out to those who may grant receipts as prescribed in the law in the shape of facility in recovering rents.

17. *Produce rents (sections* 81 *to* 83).—The rules do not protect the interest of the landholder. They are well calculated to bring on the abolition of *bhaoli* in time, as the zemindars would hardly be able to prevent pilfering and concealment on the part of tenants.

Remarks on Bengal Government circular No. 3*T*—*R*, *dated* 24*th May* 1884, *by* BABOO SURJA NARAIN SINGH *in acknowledgment of the letter of the Commissioner of the Bhagulpore Division, No.* 817*R*, *dated* 29th *May* 1884.

CHAPTER IX.

18. *Paragraph* 19 *of Bengal Government circular.*—The danger of allowing ryots to make the improvements referred to in section 87 is that as they are in possession of small plots of land, and the landlord is the owner of the whole village and has the interest of it to look to, it is quite possible that what may be an improvement in connection with the particular holding may turn out to be a source of injury to other lands in the village. Besides, the ryot has not the same opportunity of judging of the value of an improvement as the landlord is. The so-called improvement instead of being a blessing might prove a curse. It is true there is some provision in section 89, sub-section 3 (*a*), bearing upon the objection taken above, but in the first place this provision does not come into play in the case of ryots holding at fixed rents or at fixed rates of rent (section 88), and in the second place it does not appear to be quite adequate for the prevention of the mischief pointed out above. Before a tenant of any class is allowed to make any improvement, the objections of the landlord should be heard, and a decision should be made whether the objections are valid or not. No improvements affecting prejudicially other lands in the neighbourhood should be permitted to be made, and the landlord should have the preferential right of making them, except very minor ones, such as enclosure, clearance, and the sinking of cutcha wells. It has already been remarked that a ryot's dwelling-house is not generally a part of his jote land, and that in quitting his jote he is not evicted from his house. Such being the case compensation for dwelling-house is not generally required to be given on eviction from jote lands. The universal custom of the country is that a tenant does not build a dwelling-house for himself and his family even on his own jote land without first obtaining permission from the landlord, and it is expedient that this custom should be observed, for a tenant might build on the best land he has, and thereby subject the landlord to loss in future by creating difficulty in the way of his recovering enhanced rent on such land on the basis of crop land. I do not see any harm in allowing the non-occupancy ryot the right of constructing a cutcha well, provided the zemindar is first asked to construct it himself and he declines, and his objection to the tenant constructing it is found to be untenable. The finality accorded to the Collector's decision (section 89, sub-section 3) is open to much objection. The Collector may take an erroneous view and allow the tenant to make such improvements as might seriously injure the landlord. An appeal to the civil court from his decision should be allowed. Facility should be afforded to zemindars to acquire lands under the Land Acquisition Act for improvements connected with irrigation; but at the same time the zemindar whose lands are acquired should be protected from indirect or future loss caused by the works. I am, however, not in favour of empowering revenue officers to interfere in the manner suggested in clause (1), paragraph 2, of the Government of India's letter. Over zealous officers may cause incalculable harm to one zemindar by cutting his irrigation channels and distributing water to a neighbouring landholder. As, however, the general creation of the right of occupancy and the introduction of stranger tenants by the creation of the right of transfer would tend to weaken the power of landlords, it would be desirable to empower the revenue officers or any other authority to arrange for the cutting of irrigation channels in lands held by ryots at the instance of their zemindar or at the instance of any ryot as against *his* zemindar or *ryots under the same zemindar* after the objections of the latter have been heard and finally disposed of by the said officers or authority and on appeal by some appellate authority. It would strike a blow to all notions of exclusive property if revenue officers were to allow other zemindars or ryots of such zemindars to participate in irrigation works constructed by a different zemindar or his ryots. This apprehension, however, is not applicable with the same force in the case of irrigation works constructed by a zemindar on his own land or by ryots under the same zemindar The Land Acquisition Act may be resorted to if sufficient safeguards are laid down to secure the zemindar whose lands are taken from eventual loss by the bursting of the banks of the channels or their widening by the covering of the land with sand or from any other cause not taken into account at the time of acquisition owing to its not having come into play, and the present Land Acquisition Act may be modified for a such purpose. Provision should also be enacted whereby the zemindar whose lands are taken, instead of receiving the value of them, should have the option of participating in the benefits of the works, and also for the construction of works at the joint expense of several zemindars on the basis of an agreement made before the construction of the works or on such other basis as may be deemed equitable; but no power should be vested in revenue officers or any other authority to interfere with existing works or such works as might be constructed in future by zemindars on their own account without recourse to the provisions of the proposed Act.

19. *Paragraph* 20 *of Bengal Government circular.*—The danger apprehended from the abuse of the provisions as to abandonment on the part of landlords is imaginary and not real. Landholders may have expelled ryots or may in future expel them without having recourse to any legal formalities whatever, but there are hardly any cases where a landlord has falsely set up the plea of desertion and taken possession of the lands of the ryot. False pleas of surrender of jotes are not unknown, and in order to guard against them, some facility of proof of actual surrender other than a registered deed, which is generally expensive, ought to be provided for, or if a registered deed be deemed essential, then the cost of registration should be cheapened. The provision contained in subsection (3) of section 96 is open to objection. Instead of allowing the ryot to re-enter as is therein provided, it would be better if landlords were required to give notice of abandonment at once to any constituted authority who might hold an enquiry and declare the holding to be an abandoned one. After such declaration the landlord's right to re-entry should be indefeasible. In order to prevent loss to the landlord through delay in making the declaration, the law might enact that the enquiry and declaration must be made within a specified period from the date of application or the enquiry, and declaration might be made after re-entry in urgent cases when delay would lead to loss to the landlord.

20. *Paragraph* 21 *of Bengal Government circular.*—The landlord should have the power of measuring all lands comprised in his estate or tenure, lakhraj holdings not excepted. It is impracticable for a landlord in many cases to detect whether a lakrajdar has encroached on his *mal* land, unless he makes a measurement. There is no harm done to any body if a survey of internal details is even allowed to be made. A survey of only external boundaries might not in some cases afford all requisite information, but this measurement and survey should only be confined to ascertaining the area, the names of the ryots, and the lands held by each, and, if the lakrajdar should desire, be made in the presence of or through some public servant or amin appointed by the civil court or the revenue officers as the Bill may provide Measurements should be made dy the local standard, as this is better understood by every body concerned.

21. *Paragraph* 22 *of Bengal Government circular.*—The difficulties which are supposed to arise from shareholders' disputes have not been felt in this district, and no managers of joint estates have been appointed. Under the present law, so far as I am aware, those difficulties have to a large extent been minimised by the Land Registration Act. The manager of a joint estate appointed under authority of the existing law, or any law that might be passed in that behalf, would be a title despot, and would play the *rôle* of King Stork of the fable. No attempt should be made to keep on the Statute Book the provisions relating to managers in joint estates. They tend to deprive landholders of the control of their property, make them slothful—a quality in which they unfortunately are not wanting—estrange the landholders and ryots from each other, and cause much harm to the interests of most of the shareholders, especially the poorer ones.

Remarks on Bengal Government circular No. 3*T—R, dated* 24*th May* 1884, *by* BABOO SURJA NARAIN SINGH, *in acknowledgement of the letter of the Commissioner of the Bhagulpore Division, No.* 817*R, dated* 29*th May.*

CHAPTER X.

22. *Paragraph* 23 *of Bengal Government circular.*—To the ascertainment of existing rights and facts and their record in a given form there can be no objection in theory, but the question is a grave one from a practical point of view. Any one having any experience of the country would hesitate long before he recommended the preparation of a record of rights for tenancies in the Lower Provinces. One ought to realise the stupendous nature of the work before he should commit himself to recommending it. Imagine for a moment the number of amins amlas, peons that would be let loose over the country; the state of unrest that would be created, and the expense that would entail to the State and to both landlords and ryots in feeding and feeing the men that would be let loose. Whatever the results of the adoption of such a course may be in the distant future, it is hardly an exaggeration to say that as long as the machinery would be at work the common ruin of both landlords and tenants would probably have been effected. The host of claimants that were invited by the Land Registration Act is quite familiar to those who watched its operations. This Act, however, only applied to registration of proprietary interests, whereas the provisions of the Bill would apply to tenancies, the number of which is legion, and the enquiry is a much more detailed and complicated one The peace and harmony that subsists between landlords and tenants would be rudely shaken, and every inch of ground would be fought by both. Is it expedient that such operations should be started when a complete record of rights and tenancies can be quietly obtained by encouraging the interchange of written leases? The road cess returns also afford some means of preparing a record of tenancies. For instance if periodical returns are made, a comparison of them would shew the length of time a ryot or other tenant has held land in the village, and if in future returns a few columns are added for the supply of some further needful information, the record would be of great value for administration purposes.

To the particulars mentioned in section 111 I would add the classes of land held by a ryot, the crop grown thereon, the average yield thereof, and whether the lands are irrigated, and how. It would be desirable that after all the trouble and expense incurred in preparing

the record, it should have finality for a specified period instead of being liable to be disputed in respect of undisputed entries. To guard against the objections taken to according finality to the record, it might be enacted that all undisputed entries should be signed by the parties concerned, and that if any party should not, on receiving notice to sign, appear within a specified period and sign or object to the entry, a note of the fact should be made against his name, and the entry shall be presumped to be conclusively correct. It would be well if in the enquiry leading to the preparation of the record, selected arbitrators were to act with the revenue officers.

23. *Settlement of rents (Government of India's letter, paragraph* 21).—The association of selected arbitrators consisting of landholders or law agents and ryots having an experience of agricultural matters in the vicinity, but not belonging to the village or estate, coming under the operations should be provided for both when the revenue officer is engaged in settling rents and also when the appeal is heard by the special Judge. If an arbitration court sits in each case, the power of the High Court may remain limited as it is in the Bill; otherwise it is not desirable to restrict the powers of the High Court in the manner proposed in section 118 (6). Why should not the High Court sit in judgment on the question of the propriety of the rates? I fail to see the propriety of barring enhancements for fifteen years when the rent is only ascertained and not settled (section 120). The reasons urged in paragraph 21 of the Government of India's letter for the adoption of this provision are not conclusive. It is quite possible that at the time of the settlement of rents, the grounds of enhancement might not be applicable and they might well apply five or eight years after. For instance, a ryot's rent had been enhanced by mutual agreement or by order of court within even or fifteen years, as the case may be, previous to the commencement of the settlement operations. How could the landlord apply for an alteration of the rent? The result of the provision in question would be to deprive the landlord of all enhancement for a much longer period than it is contemplated in the Bill. The cost of the preparation of the record of rights and of settlement of rents should be borne by the party moving the revenue officer: if the operations should be started at the instance of the local Government, then by the State

CHAPTERS XI AND XII.

24. *Paragraph* 24 *of Bengal Government circular.*—In my opinion chapter XI should be altogether omitted. It is now seen that it is not practicable to lay down tables of rates which would be of any value for any purposes of enhancement. The Bill should not contain any provisions which might afford temptation to the local Government to make an experiment. Although the omission of the provision that all lands shall be presumed to be ryoti from chapter XII takes away the pungency which adhered to the provisions of the original Bill, the very same result is attempted to be attained in milder language by the presumption prescribed at the end of section 138 (2). Suppose after making a record of the proprietor's private lands, the proprietor were to cultivate any waste and jungle lands and were to lease them out as provided in section 30, will this land be deemed to be his private land or not? The broad distinction between ryoti lands and private lands of the proprietor according to the custom of the country and the law of the permanent settlement lies in the fact of whether the land is in the possession of any ryot as his jote land or not. All besides this is the proprietor's private land. The introduction of any new distinctions would curtail the rights of the proprietor, and as the provisions of the Bill now run would benefit nobody. On the contrary, if it be the intention of the Legislature to bar an increase to the area of the private lands of the proprietor after the preparation of the record, which intention does not seem to be clearly expressed in the Bill anywhere, the result would be withdrawal of all incentive to the cultivation of waste or other unoccupied lands on the part of the proprietor—a result which is very much to be deprecated. Chapter XII should be omitted, for a proprietor can increase the stock of his kamat as stated above. The chapter would introduce an unnecessary complication in the village economy.

CHAPTER XIII.

25. *Paragraph* 25 *of Bengal Government circular.*—Distraint is a means to an end. If the end be not attained it is useless to provide for distraint. The apprehension that if distraint be made a process of court, the end would not be secured, and the crops would be removed is not groundless. The remedy by an *interim* order is not likely to be efficacious. The distrainer will have to come to the court to make his application and by the time the *interim* order may be made and served on the ryot or the officer of the court reach the spot and distrain, the crops may be removed. To enable the court to supervise the action of the zemindar's servants, it might be enacted that within a specified period of making the distraint notice thereof should be given to the court by an application, and that the court would depute an officer to take charge of the distrained property. After this the matter might be entirely under control of the court. The remark that a remedy against the crop may be a more humane process than the remedy against the land is truly applicable to this country. The right of distraint may in some instances have been abused, but the same may be said of every other kind of right. The abuse is within the power of the executive to suppress, and it does not seem reasonable to alter the law materially and divest the process of distraint of all its utility by making it a process of court from the very commencement. The delay in a Bengal munsif's court, as was truly remarked by a high functionary, who is now a strong

opponent of the zemindars, and an advocate of tenant right, is proverbial. Very few zemindars would resort to the procedure laid down in the Bill for distraint when they come to find that the application would be infructuous.

CHAPTERS XIV AND XV.

26. *Paragraph* 26 *of Bengal Government circular.*—On the question of simplifying the procedure in suits for arrears of rent, I beg to make the following suggestion which has also been made by the local Landholder's Association. I quote with slight modifications what had been written by the Association elsewhere on the subject.

The present procedure for recovery of rent is dilatory and inconvenient, and ought to be simplified. The rules regarding grant of receipts and submission of annual accounts as contained in the Bill will be found to be impracticable in many cases. The annual rent is not in many cases ascertained until at the close of the year after a measurement of the lands. In some parts of the country rent varies with the crop. It would be impossible in such cases to state the annual rent in every receipt when the amount of it is not even known. Then there are small proprietors who would find it extremely difficult to observe literally the provisions laid down in the Bill. These provisions will practically remain a dead letter, and the landholders shall be held up to as execrable persons for not complying with the provisions of the law, as is now being done in the case of *abwabs.* Legislation opposed to the genius of the people and their inverate habits is hardly acted up to. The law on this point ought to be permissive, and some advantages should be held out to those who comply with its provisions A landlord's rent suit ought to be decreed on the day the plaint is presented on production of registered kabuliyat and counterfoil receipts and proof of the claim by necessary oral evidence as in an *ex parte* case, and also on proof that a copy of the plaint had been served on the tenant by post or otherwise at least a week before the institution of the suit. Immediate execution should follow, and if the tenant should apply for a re-hearing, it should be incumbent on him to deposit the decretal amount before the prayer is granted. This procedure with necessary modifications might be extended to other cases also when there may not be registered kabuliyats but only counterfoil receipts; but in these cases no *exparte* decree should pass if the tenant in reply to the notice should serve a counter notice denying the validity of the claim.

The provision occurring in section 164 is good. Chapter XV contains a cumbrous procedure which is likely to retard the speedy realisation of rent decrees. The property should be once for all put up to sale free of such encumbrances as are not protected.

CHAPTER XVII.

27. *Paragraph* 29 *of Bengal Government circular.*—Freedom of contract should not be barred at all. In deara and chur lands, and also in lands newly reclaimed from waste, the restrictions on enhancement should not apply until the full village rate is reached, and the right of occupancy also should not accrue till then; and if the whole of the village be newly formed, not till the lands have attained to that maturity which such lands ordinarily do. The period of 12 years prescribed in section 212 cannot always be a safe guide; the duration may be longer in some cases though generally it is not likely to be so. Whether deara lands have reached the stage of maturity or not, it is the custom here for zemindars to take *khas* possession of such lands as became fit for the cultivation of melons, water-melons, &c., and this right should be preserved no to them.

28. *Paragraph* 30 *of Bengal Government circular.*—There are no special rights of pasturage and special provisions are needed for it.

29. *Paragraph* 31 *of Bengal Government circular.*—I have already offered some remarks regarding landlords, irrigation channels, homestead land, and some other points touched in this paragraph. In my opinion it would be better to separate the taluks referred to in this paragraph from the control of the zemindar, and bring them on the Government towji direct.

30. *Paragraph* 33 *of Bengal Government circular.*—Besides *utbundi* and *hal hasilee*, there are *sairabadi* and *hustabadi* holdings possessing like characteristics.

31. *Paragraph* 34 *of Bengal Government circular.*—I have already stated my views personally regarding *gorabundi* holdings. As at present used, the term is convertible with holdings described in section 3 of the rent law. There are no distinct tenancies called *gorabundi* having any special characteristics irrespective of the provisions of the rent law.

Notes on a few of the Sections of the Bengal Tenancy Bill, published in the Gazette of India, *5th April* 1884.

CHAPTER IV.

Section 23 (*b*).—Where there is a registered agreement between an indigo zemindar and a ryot the latter is liable to be ejected for non-performance of his contract to sow indigo. Will this section apply? I do not refer to agreements taken since March 1883, but those that can be traced back for a number of years.

CHAPTER V.

Sections 25-26.—If this means that a settled ryot, who may have held, say, 10 bigahs for the last 12 years, and new lands for the last two or three years, acquires a right of occupancy in all the lands in his possession on the passing of this Bill, it would be conferring a right on him which he never dreamt of claiming. The Bill does not propose to give such a right to the landlords for their khamat lands, as will be seen by reference to section 138 (*a*), as there they must shew cultivation for 12 continuous years before the passing of this Act.

This section, I presume, is meant to nullify the action of those landlords who shifted their ryots to prevent their acquiring rights of occupancy. In doing so they were strictly within the law. But if the Committee are determined to change the same, would it not be sufficient if the ryot was allowed to have a right of occupancy in the land in his possession on the passing of this law on his proving he had *that area* for the last 12 years, although he might have been shifted from one plot to another?

Section 27.—"Estate" ought to be more properly defined. I have an estate paying revenue in Purneah, and comprising villages in three districts—Maldah, Purneah, and the Sonthal Pergunnahs—and some of the villages are over 30 miles from each other. Many other landlords are in the same position. It never could be intended, a ryot holding land in one of these villages, would be a settled ryot in all the others. I would suggest "estate" to mean the villages of an estate contiguous to one another, or within a certain distance.

Section 28.—If the latter part of this section means a landlord cannot make use of the right of occupancy, as any other purchaser of the same, that is, he would lose it if he settled the land with a settled ryot, what would be the use of his purchasing it? He will have to pay for something from which he derives no benefit. It is a mistaken idea to think the landlords are going to purchase all the holdings in the market to make them neezjotes. It will only be made use of to keep out objectionable tenants or neighbouring landlords

Section 29 (2).—I understand by the latter part of the paragraph (2) of this section an izardar or farmer cannot acquire a right of occupancy by purchase during the tenancy of his farm. I may be mistaken, but it ought to be clear. Anyhow, he ought not to have the power without the consent of the landlord during his lease.

Section 30.—My experience is the yearly lease is understood without a written agreement, and so the tenants of the neez lands were never supposed to acquire rights of occupancy; but if the yearly lease, or the least for a term of years, is to be a registered one, the only remark I may make is it is entirely against the custom of the country. It was always considered sufficient evidence of the neezjote if the lands were entered as such in the jumabundi papers of the village, and whatever was collected in the way of kind or money from the undertenants was kept by the landlord separately, and had nothing to do with the village papers.

Section 31.—Will a ryot, by settling ryots on his land, *i.e.* allowing them to build houses on it, come under the definition (*a*) of rendering the lands unfit for cultivation? This ought to be properly defined. It is against the custom of the country. I may mention here of the custom of landlords settling a village on any suitable piece of land in the event of the old site being diluviated, without paying any compensation to the cultivators, as it was for the benefit of the whole community. This is so well understood that the saying is first "basto," then "chass." Under this law a ryot would refuse to give up his land for bhast, although on a chur, if he had been in possession for over 12 years. This would put the whole village to great confusion, and I would therefore suggest custom ought to be allowed to prevail.

Section 31 (*g*).—A tenant is not allowed to sell a part of his holding, but he can sublet a part. The first part will be evaded by giving a sublease, so that an obnoxious neighbour may be brought in. I know of several instances where the zemindar having objected to the new purchaser, the old tenant has allowed his name to be kept in the jumabundi papers, the rent being paid by the new purchaser, and receipts taken in the name of the original holder. To keep out outsiders, or those objected to by the landlord, I would suggest the subleasing should be to resident cultivators. They are always ready to take up land.

Section 31 (*f*).—I am against the right of transfer, as I have seen the evils of it. Hangers about court, money-lenders, amlahs, &c., are very often the purchasers, and my experience has been they have taken more than four times the rent payable by them in kind and money. We may try to stop this rack-renting, but it is simply impossible, as the undertenants are a very poor class. In districts where the right of transfer has never

been recognised, it should not be introduced; but where it has been so, it should be with the consent of the landlord, which has always been recognised. If the Committee is determined to give them the right, then I would suggest they should only be sold to resident cultivators, to which no well-meaning landlord would object. The great object of the Government seems to be to keep the land in the hands of the actual cultivators, and not to create a class of middlemen who will oppress the cultivator ten times more than the actual landlord.

Section 32. *Latter part of paragraph* 4.—I think the court once having fixed the price, the tenant should be made to accept it, if the landlord tenders it.

Section 32 (5).—Would the landlord be obliged to pay the price paid or supposed to be paid by the purchaser, or would he have the right of asking the court, assisted by the assessors, to fix the value of the same? This is not clear, and ought to be made so. It is a well-known fact fictitious prices are entered in a deed of sale; and without the right to apply to the court for a valuation of the holding, the landlord would be treated unfairly.

Section 35—Deeds of sale will be drawn up as gifts to deprive the landlords of the right of pre-emption, so the right the landlord had of purchasing under section 54 (3) and (4) of the first draft Bill ought not to be omitted. It is only those who have had business dealings with the natives of India know how cleverly they manage to evade the law.

Sections 41-42.—If rents are not to be enhanced, unless under a registered contract, Government may at once take from landlords the power of enhancement in so far as it respects certain districts. In some districts the tenants, on no consideration, will go before a registering officer to register their leases; and one cannot be surprised at it, especially where the holdings are small, and the ryots live 20 and 30 miles from the station. In the Maldah district I have had the greatest difficulty in inducing a few tenants to register their leases, and in those instances I have had to pay all charges.

I have had a statement drawn up of the number of my ryots in the Muthrapoor property in Maldah, Purneah, and the Southal Pergunnahs, and the following is the result:—

Out of a total of 9,885 ryots—6,700	pay	under Rs. 5	a year—	
1,669	„	„ 10	„	
684	„	„ 15	„	
336	„	„ 20	„	
285	„	„ 30	„	
97	„	„ 40	„	
41	„	„ 50	„	and only
43	„	over 50	„	

Most of these ryots live over 20 miles from the registry office, and how can it be expected they will go there for every settlement. Their expenses would be more than the annual rent paid. I have given these figures to shew I have not exaggerated the difficulties of the case.

If the law provided that all settlements for a hundred bighas and over for a term of years, or for an annual rent of Rs. 50, should be registered, it would be practicable. If the landlord and tenant come to a settlement between themselves, so long as the rental is not more than a certain percentage of the estimated average annual value of the gross produce, why should there be any interference? There might be a written agreement between the parties for rents under Rs. 50 a year witnessed by the head ryot or the punchyets of the village to prove the validity of the agreement, and as the landlord is bound to give the ryot an account of his holding, according to schedule III of the Act—*vide* section 71, when an acquittance is given—it would be further proof of the agreement come to.

There being no registered lease does not destroy the right of occupancy of the tenant. I can see no object in enforcing registered leases in small holdings, unless to harass both parties. In limiting the increase to two or four annas in the rupee will benefit the landlord who has not scrupled to harass the ryots with periodical leases; whereas the lenient landlord will suffer by not receiving his full rents for the next century. I have no hesitation in stating a good many of my tenants do not pay as rent one-fifteenth of the value of the crop, and the reason is the rents are low, because I get an equivalent by their sowing indigo for me; but by this section, if they refused to sow indigo, I could only receive from 12½ to 25 per cent increase on the present rental. The tenants quite understand they would have to pay fair rates if indigo cultivation was given up; but beyond the few registered leases—about 20 at the most, referred to previously—I have nothing but petitions from the ryots which I accept, stating they will pay certain rates on the condition of sowing indigo, and I give them an umnulnamah stating I have agreed. They are paid for the indigo at the end of the season, and take new advances for the next year. This has been going on since 1816, and I am happy to state there has never been a single case in our indigo factories in Maldah or Purneah for damages for breach of contract. I would be very glad to have these argeements or umnulnamahs registered, but the ryots will not do it. It is not from want of trying, for I did my best one year to induce them to do so, and they all combined, and would not put a plough into the indigo lands till I gave in.

When Mr. A. Money was Commissioner of Bhagulpore, he ordered pottahs to be given to, and kabuliyats taken from, all the ryots of Havalee Kurruckpore, belonging to the Maharajah of Durbhunga, then under the Court of Wards, which was accordingly done; but although he offered to pay all the expenses connected with the registration, they all

refused to go, and he had to give up the idea. When a Government official of his position could not have his orders carried out, it is not likely a landlord can do so against the wishes of his tenants.

Even if there was a registered contract, the indigo landlord, by section 41, could not take the full rate he was entitled to, but only get either 12½ or 25 per cent. increase, and the consequence would be indigo cultivation would be stopped. This is no exaggerated statement, for I have gone through the ordeal at Rajmehal, where the factory was closed for three years without the slightest dispute between myself and the ryots. In 1880 Mr. Browne Wood, the Settlement Officer of the Sonthal Pergunnahs, fixed a nominal increase of rent in my properties, which even then were half of what my neighbours collected. I explained to him the rate fixed by him was half of what *he* had settled in 1862 in the adjoining property of Jumnie. He said he knew it, but could not increase the rents more than he had, as it would not look well; but as I was on good terms with the ryots, and did not really want an increase, as they sowed indigo, it was all right. I told him the consequences would be serious to me when they knew I could not get higher rents, and what I said was verified within the week by the ryots stating they would pay the nominal increase, and refusing to sow indigo. I challenged the tenants to state any act of unkindness or unfairness to them, and they one and all said they had no grievance; but having had their rents fixed very low they did not see why they should not take advantage of it. These facts are well known to Mr. G. N. Barlow, the Commissioner of Bhagulpore, and it was only when my property was exempted from the settlement by the Hon'ble Sir Ashley Eden, the Lieutenant-Governor of Bengal, and I had my rents fixed by arbitration, they came to a settlement. However, it was three years before they took to sowing indigo again, by having their rents reduced, as they found it more advantageous.

Section 42.—I consider this section as a modified one of section 56 of the former draft Bill, for if the landlord purchases the right of a ryot, he will not be able to let the lands to a settled ryot at more than an increased rent of 25 per cent., and that only under a registered contract, so that if the undertenant of the land be a settled ryot of the landlord, and has been paying the middleman 50 per cent. above the landlord's rent, the landlord would have to decrease the rent by 25 per cent. This section if passed will cause landlords not to give the lands to settled ryots. Suppose a landlord buys a holding paying a fixed rent, or a mokurree tenure in his own estate; would that holding come under his khamat, or would he have to take the same rent if leased to a settled ryot, or only get the 25 per cent. increase under a registered contract?

Section 44 (*a*).—The court has the power to give an increase of eight annas in the rupee, whereas the landlord and ryot can only come to a settlement of four annas in the rupee. Is this consistent? Moral points the courts will not give more than 25 per cent. The indigo agreement would be void as I stated before, and the indigo zemindar would get at the most 50 per cent., although it may be one-fourth of the prevailing rate

Section 47 (*b*).—This is very unfair to the landlord, and ought to be omitted. Section 47, paragraph (*c*), protects the ryots sufficiently. I have reduced rents to one-fourth of what the ryots usually paid on account of lands becoming fallow through the failure of an inundation, and in many instances have let off the rents altogether Under this section, if there was a deposit of mud, the court could only give the landlord an increase of 25 per cent.

Section 50.—This section should not apply to chur or deara land.

Section 51.—If rents are reduced under this section, what will be the landlord's enhancement when the lands increase in value through various causes? Will it be 25 per cent. on the reduced rent, or 25 per cent. on the original rate?

CHAPTER VI.

Section 57.—The same remarks as I have made with regard to sections 41 and 42 apply to this section.

Section 59 (*b*).—The court having the power to determine the rate between the landlord and tenant as fair and equitable would simply give the tenant the benefit of an occupancy right rent, especially as the five years' lease granted, if after a continuance of seven years, would give the tenant a right of occupancy.

CHAPTER VII.

Section 62.—This section will be evaded by the middlemen, as the undertenants of small holdings are a poor class. They will never register their contracts, and to save themselves they will either divide the crop or take the excess rent as a salamee. If the undertenants refuse, they will eject them under section 63 by giving them notice.

Where the rent paid by the undertenant is at present double and treble what is paid to the landlord, I see no provision for a reduction. Either the landlord should be allowed to increase his rent to within 25 per cent. or 50 per cent. of the rent taken by the middleman, or the extra taking of rent ought to be punished in some way. The policy of the Government and of all well-meaning landlords is to keep the land in the hands of the cultivators.

Section 63.—Should a landlord purchase the right of the middleman, and the undertenant be a settled ryot of the landlord, will the latter become a settled ryot in respect of that holding? This will occur very often.

CHAPTER VIII.

Section 64 (2).—1839 ought to be the presumption, as in Act X of 1859. How few zemindars there are who can produce papers of 20 years. The poorer ones have not the means of keeping them, and in many of the districts, like Maldah, Dinagepore, &c, owing to the damp climate, they are eaten up with whiteants. In taking copies of records from the courts of 30 or 40 years, you often come across portions marked illegible, as having been destroyed by whiteants.

Section 70 (3).—This is simply impossible on receipts given during the year. The landlord may have to measure the lands every year, and do a good many other things, not knowing the annual rent payable by the tenant. Let there be a counterfoil of every receipt. I quite agree with an account being written on the back of the farkuttee, as shewn in schedule III of the Act, to which the ryot is entitled as soon as he pays all his rent. If there is a dispute about the account, the ryot has a perfect right to apply to the court for the same. Nothing is here said about the receipt to be given to the undertenant. I think he requires more looking after than the others, being generally more ignorant than the others; so section 71 ought to apply to him and paragraph (2) of section 70.

Sections 85, 86.—With such a heavy penalty as a fine of Rs. 500 for taking an illegal cess, such as abwab, &c, I think it ought to be properly defined. Six months is a long time for limitation. Two months ought to be quite sufficient to prevent combination with regard to illegal cess. I wish to put the following two or three cases which some may think illegal and others not. For example:—Certain ryots for years pay an extra rent for their lands to certain shareholders, but do not take receipts, as they do not wish to pay the same to the others, and have a hope of not paying it in the event of the property changing hands. Would that be an illegal cess? Again, I have known of instances where the lease of an estate has been taken for a number of years, and the ryots have agreed to give an increased rent during the term of the lease, but would not take receipts, as they did not wish their farkuttees to shew an increased rate. Was that an illegal cess? And lastly—would a landlord after purchasing an occupancy right on settling the land with a settled ryot, or with an ordinary ryot, be guilty of taking an illegal cess if he took a bonus to recoup himself for the money laid out in the purchase? I should scarcely think the latter case would be considered illegal, but there are a good many who think the two former are. By all means punish severely all oppression of the cultivator, but let the illegal cess be properly defined.

CHAPTER IX.

Section 89 (2).—If it had been a fact the occupancy ryot made all the improvements and the landlords none, I could understand the ryot having the prior right, but such not being the case, why place him before the landlord?

Section 95.—Can a ryot surrender a part of his holding? This is not stated in this section, and ought to be settled.

Section 96 (2).—On whom is the landlord to serve the notice if the ryot has left the village?

(3) No tenant will take the land if he finds he can be turned out within two years. A man may give up his land for want of means to cultivate it. He would claim it within the two years if he found it well cultivated. If the occupancy right is valuable, as Mr. Reynolds seems to think, the ryot would sell it. It is only where the population is very great and rents are very low the occupancy right is of any value. In some districts, like in the southern parts of the Monghyr and Bhagulpore districts, where rents are very high, you never hear of any one receiving a price for his holding, although, I should say, 90 per cent., if not more, of the ryots have occupancy rights. In some parts of Maldah, Purneah, and North Bhagulpore, the difficulty is to get ryots. Six months ought to be the limit of time for bringing a suit for recovery of possession. The real hardship a ryot has to undergo to recover possession of his holding is the heavy expense he is put to at present, and it well merits the kind consideration of a Government who wishes to benefit the poor classes especially. The ryot ought to be allowed to apply for possession on an eight-anna stamp paper. At present he has to pay a stamp duty of 7½ per cent. on fifteen years' rental. For example:—If a ryot wishes to recover possession of 25 bighas for which is paying Rs. 4 a bigha, he has to pay a stamp duty of 7½ per cent. on Rs. 1,500, and 5 per cent. on the same to the pleader as fees, besides other charges; so one can imagine the hardship entailed on a tenant. The same applies to a landlord if he wishes to eject a man who is a trespasser. It is a common habit in Bengal for ryots of another zemindar, who lays no claim to the property, to take forcible possession of newly formed chur lands, knowing the owner is bound to come to settlement with them on account of the heavy expenses incurred in cases of ejectment. This has been my experience in Maldah.

Section 97.—This can be evaded by subletting a part of the holding.

Section 99, *paragraphs* (*a*) *and* (*b*).—These paragraphs respecting measurements shew the impossibility of granting receipts according to form schedule III as stated in section 70.

CHAPTER X.

Section 110.—If the Government were empowered to act upon the application of the landlord and tenant, as stated in (2) of section 110, this would be advisable; but as it is, under the first paragraph, the Government are allowed, of their own motion, to put this section into action, thus causing ill-feeling and promoting litigation.

Section 121.—A percentage ought to be charged on the rental; for, as at present stated, it would be ruinous to all parties. What was the expense of Government in the settlement of the Sonthal Pergunnahs?

CHAPTER XI.

Section 133.—The same remarks applicable to this section as to section 121.

CHAPTER XII.

Sections 135, 136, 137.—Under these sections no landlord could have a khamat on new chur lands, and if he had, after a survey how would he have to act? This would prevent an indigo landlord from having a neez cultivation on a new chur. What is to be done with any waste lands the landlord may have taken up within the last 12 years and planted trees on them? From these sections I presume a landlord could not turn a holding he purchased into a neezjote, even if he cultivated it himself, or turned it into a garden.

CHAPTER XIV.

Section 162 (*c*).—I would suggest with the summons a copy of the plaint should be sent to the defendant.

Section 162 (*d*).—If a summons is sent through the post, and the tenant does not accept it, the head ryot or one of the punchyets ought to sign the receipt.

Section 162 (*g*).—The manner of the execution of a decree ought to be left to the discretion of the decreeholder, and not as at present, where you are obliged to take out execution at first, against the person of the judgmentdebtor, then against his moveable property, and finally, against his immoveable property, thus swelling up the amount of the decree with costs to four or five times the original amount; whereas, if the decreeholder had been allowed to execute his decree as he thought best, he would have attached the immoveable property, and realized the amount. This has been my experience in Bhagulpore. Why cannot there be a summary sale of the holding after decree is given by the court like the putni tenure sale, especially if the ryot is one year in arrears. I would suggest all sales to be held in the village or estate at the mal kutcherry or some prominent place, to enable the resident ryots to bid. Cultivators do not care to go the courts 20 or 30 miles away on the chance of purchasing a holding, so jotes are likely to fall into the hands of the hangers-on about the court.

CHAPTER XVII.

Section 213.—By this section can the ryot and landlord come to an agreement without a registered contract? I presume not, according to sections 57 and 60. It very often happens the land, although over 12 years in the possession of a tenant, is liable to improvement or deterioration by fluvial action. A high inundation may make the greatest difference to the land; whereas, if the high lands for three years or so are not submerged, they become fallow, and are scarcely fit for anything. These lands very often have been 15 and 16 years in existence. All chur lands ought to be exempted from the Act, and the landlord and tenant allowed to make their settlements without being obliged to have a registered contract. The ryots, owing to the fear of the land cutting away, or deteriorating through the action of the river, will not go to the expense of registering their leases. On churs in Maldah there are all kinds of rates; one for boro paddy, another for jetkur cheena, a third for kalai, a fourth for scattered seed crop, a fifth for mustard, a sixth for melon, a seventh for indigo, and so on. Another custom is for the headmen of the village, when a new chur forms, to put in a petition for the lands, and then divide the same among all the ryots according to the number of their ploughs, the headmen settling the rent. Under this law a registered contract would have to be taken, which is simply impossible, as next year the land may be in the bed of the river. I mention this as my experience, after living on the banks of the Ganges for the last 25 years, and seen the river change its course within a distance of six miles three times during that period.

JAMES HENNESSY.

EDINBURGH,
2nd July 1884.

J. E. S.—Reg. No. 5259C—327—15-8-84.

No. 1848R., dated Bhagulpore, the 14th August 1884.

From—G. N. Barlow, Esq., c.s.i., Commissioner of the Bhagulpore Division and Sonthal Pergunnahs,

To—The Secretary to the Government of Bengal, Land Revenue Department.

I have the honour to forward a copy of a report upon the Bengal Tenancy Act by Mr. H. Reily of Chanchal.

Note on the Bengal Tenancy Bill.

1. At the threshold of the endeavour to regulate and prescribe the conflicting rights of landlord and tenant by legislative enactment, lies the difficulty involved in arriving at some definite conclusion upon which the proposed provisions of the law shall firmly rest. No one who has given the subject serious attention can for a moment doubt, that a searching and comprehensive revision of the present law has now become a matter of absolute necessity. It should, however, occasion little surprise that the gradual elaboration of this new scheme of rent law, from the time of its ruder beginnings to the moment when we have the finished details embodied in the form of a Bill, has been accompanied by varying gusts of opposition, often losing themselves in a whirlwind of wild invective. On the other hand, the advocates of the Bill as originally drafted, exhibited, I think, something more than a suspicion of injustice in attributing all opposition raised to the leading principles of the Bill, to a wild and unreasoning prejudice in favour of the rights of the zemindar. The matter, however, is not worth further notice in detail, in that a large proportion of the questions which excited these hostile comments has now been definitely abandoned. At the same time, speaking for myself as one who offered a sustained and persistent opposition to some of the leading principles of the Bill as then drafted, I can most conscientiously assert that the considerations which provoked this opposition were not founded, so far as I am aware, upon any leanings which may be supposed to sway my mind towards the zemindar's view of the question; but were excited quite as much by the feeling that many of the provisions in the law, as then framed, would not give effect to the benevolent object which had procured their insertion. My action was prompted quite as much by my desire to secure the real and lasting benefit to the ryot, as by my anxiety to preserve to the zemindar rights which I considered justly his due. The fact that the attitude assumed by me in this matter has more than once been made the subject of official comment, must be my excuse for alluding at such comparative length to a question of a purely personal nature.

2. The Bill, in order to justify its existence, must necessarily handle with unsparing impartiality cherished beliefs, and with equal candour and firmness set aside customs and observances of suspicious origin; but encrusted nevertheless with the dignity attributable to extreme old age. Without, however, wasting time in an unprofitable endeavour to adjust the precise proportion of merit attributable to each of the contending influences in the noisy controversy, it may, I think, be asserted with safety that the verdict which will ultimately apportion the proper modicum of praise or dispraise to the efforts of the framers of the new Bill, will not to any great extent be attracted by the influences which lie for the moment nearest the surface; but on the contrary gain vigour and force according as it is seen how far this Bill endeavours to rectify injustice, and to mitigate the sorrows of those who are peculiarly susceptible to the tyranny of harsh treatment.

3. In an attempt to criticise the sections of this Bill it would, I think, be absurd to hope that the remarks of each critic, however conscientiously delivered, would not to some degree be tainted by his own predilections. In the great body of opinion which will soon be at the disposal of the Government, this evil will neutralize itself, and those charged with the duty will have little difficulty in estimating the true value of opposing opinions. For my own part,—and I mention the matter more particularly now, as my own views lead me to dissent from one or more of the leading principles of the Bill,—I do not pretend to bring to a consideration of the subject any thing more than a mind stored in some measure with a practical knowledge of the ways and habits of a people among whom a large portion of my official life has been passed. I have enjoyed the further advantage of a long familiarity with the method in which the existing land-laws were worked throughout those districts which were under my immediate observation: armed with this special knowledge, which I may remark, only extends to that part of Bengal where land is greatly in excess of the demand, I may be deemed in some small measure to be in a position to arrive at some definite conclusion on the practical results which await the passing of the Bill in its present shape; and the conclusion forced upon me is, that the Bill in many of its provisions will not fulfil the object it is intended to serve, a defect conspicuously apparent in a large proportion of the sections professedly inserted with the object of ameliorating the conditions of the ryots. My confession of faith as regards the proper status of the ryot may, I think, fairly be summarised as follows:—"It is but fair and right that some ready means should be given to the ryot to enable him to resist illegal distraint, illegal enhancement, and illegal cesses, and to prove and maintain his occupancy-right." But I should have the right of occupancy kept as far as possible in the hands of the *bonâ fide* cultivators, and would discourage, if I could not altogether prevent, sub-letting by occupancy tenants. In my view it becomes a question of some importance whether the Legislature, in a matter which must affect the well-being of over 60 millions of people, should not confine itself to removing acknowledged difficulties and to the granting of those requirements which have been found to be necessary under altered conditions caused by ever-changing circumstances; rather than embark on the open sea of abstract principles with no more reliable guarantee for the rectitude of its course than can be extracted by the learned from a vast superincumbent mass of purely theoretical knowledge.

4. With these preliminary remarks, I would now pass to a more detailed consideration of the points noticed in the Government of Bengal Circular No. 3T—R., dated 24th May 1884.

5. With respect to questions raised in paragraph 4 of the Government letter, whether the conversion of a sub-letting occupancy ryot into a tenure-holder is a workable provision, I am, on the whole

Government Letter, paragraph 4.

of an opinion that it would be very difficult to give practical effect to the provisions of the law. I do not see how a tenant so sub-letting is to be forced to make the fact of such assignment public. In the estate under my charge there are twenty-nine thousand tenants; unless the law comes to my assistance, and furnishes me with the right to obtain such information, how will it be possible for me to discover when the ryot by his own action has stepped over the border line which separates him from the class of tenure-holders; nor am I at all certain that the provision will in any way secure the object for which it was devised. The money-lender could easily avoid the restriction attempted to be placed upon him. Among others, the following illustration will support this assertion:—An occupancy ryot, holding a *jote* of 100 bighas, becomes indebted to the local *bunnia* for a sum of Rs 500; to avoid a suit for the money the ryot is forced to assign 49 bighas of his most fertile lands to his creditors for a sum of Rs. 250. The ryot still retains his legal status as an occupancy ryot, as the amount sub let is less than one-half of his *jote*; but is left nevertheless to pay the rent of the entire arrear of his original holding out of the margin of profit secured to him by the cultivation of the 51 bighas of inferior lands. It may be taken as certain that the *bunnia* with a debt of Rs. 250, and a large interest accumulating monthly, never pays a penny of rent to the unlucky ryot. It is not necessary to follow out through its further stages the process which will enable the *bunnia* to swallow up the whole *jote* and step into the ryot's shoes, and himself become an occupancy ryot, duly registered in the zemindar's rent-roll.

Sub-letting.

6. I have more than once expressed a very decided opinion, that occupancy-rights, to be productive of any real benefit, should be accompanied by severe restrictions against the evil of sub-letting; untramelled by such limitations, the existence of occupancy-rights must infallibly lead to sub-infeudation. The occupancy tenant will escape rack-renting; but if the holding is large, and the rent he has to pay is lower than that paid by the tenant-at-will, he will probably sub-let and rack-rent his under-tenant. He will have no difficulty in most parts of this province, and in Behar especially, in finding persons who are willing to accept sub-leases from himself, and he will let the whole or the greater portion of his *jote* at rates which would leave a margin to his own rental sufficient to maintain himself and his family. The ryot would thus be able to gratify two predilections,—a love for idleness, and a fondness for having dependents at his beck and bidding. It therefore follows that on the one hand, the landlord would enjoy only a small percentage of the rent value of his property, while on the other the actual cultivator would be rack-rented and scarcely able to extract a bare living from the soil; while a band of middlemen fatten on the joint contribution of landlord and cultivator, handed over to them under the direct provisions of the law. If, however, it is found impossible to prevent sub-letting, I am of opinion that under-tenants, whether of tenure-holders, or tenants with rights of occupancy, should themselves be permitted to acquire rights of occupancy. The actual cultivator is the only person who should be considered worthy of protection, and I certainly think that under-tenants should be allowed to acquire rights of occupancy. Hitherto the under-tenant has been merely a tenant-at-will, and has been rack-rented and scarcely able to extract a bare living from the soil: an attempt might, however, be made to reduce the evil effect of sub-letting, by enacting that the landlord of every tenure-holder or occupancy ryot sub-letting any portion of his holding should, when the time arrived for the next revision of the rental of that particular *jote*, be entitled to ask the Court to fix such rental, calculated, as far as the portion of the *jote* sub-let was concerned, at a rate of only ten per cent. less than the amount paid by the under-tenant.

Government letter, paragraph 5, chapter III, section 8.

7. I would omit this section (Section 8). There are many instances in this district where a tenure-holder (under the new definition) pays only two or perhaps four annas a bigah, and has sub-let his lands to under-tenants who are paying him 12 to 14 annas per bigha. I do not see why the tenure-holder should only be liable to have his rent raised to four or eight annas per bigha, as the case may be, when he can raise his under-tenants' rates from twelve annas to Re. 1-8 a bigha. I fully appreciate, however, the motive which would make enhancement gradual, and I would direct that in no case should the enhancement payable in any one year be more than four annas in the rupee. But I would make no limit to the enhancement except that stated by me in paragraph 24. I can conceive no reason why any hard-and-fast rule should be adopted as to the percentage up to which enhancement should be allowed. If the Courts are to be trusted, I think the only limit to enhancement should be a fair and equitable enhancement, as determined by the Court. The provisions of this section would simply allow a tyrannous landlord, one who has exacted the uttermost farthing, to enjoy the full benefit of his rapacity; whereas a zemindar who has treated his tenants with consideration will be at a positive disadvantage. As a matter of fact, the harsh landlord busying himself continually with enhancing his rents to the full turn of the screw would, by such process, preserve his estate comparatively unimpaired; while the pattern landlord, keenly alive to the comfort and interest of the tenants would, by his very philanthrophy, indirectly bring about a serious diminution of the rent-roll. This section simply means a confiscation of an important portion of the landlord's rights; the legal machinery set in motion to enforce this view being calculated to work with greater cruelty on the most deserving of the class of landlords, while the rack-renting, evicting zemindar comes off comparatively free, and escapes punishment altogether. If the restrictions laid down in section 8 were omitted, and enhancement permitted to the full amount obtainable under the

provisions stated by me in paragraph 26 of this letter, I would feel inclined to direct that rents once enhanced may not be altered for 25 instead of 10 years, as laid down in section 10. Another objection to this percentage being fixed at a hard-and-fast limit is, the difficulty of calculating the percentage in cases where land is held below its real letting-value in consideration for service rendered, or the growing of a new produce. How are we to determine what the money-value of such service is, or what the proper enhancement should be, in cases when the ryot got his land at a low rate for the purpose of the introduction of these new crops? The present arrangement is perfectly unworkable; whereas if the enhancement were to be "a fair and equitable one," every one of these considerations would have its due weight.

Government letter, paragraph 6, Chapter IV.

8. In the Maldah district, the few instances in which suits are brought, the 20 years' presumption is almost invariable pleaded *pro forma*, but never persevered in; the reason of this is, that the frequency with which ryots alter the sites of their holdings in districts where so large a margin of uncultivated land exists, renders the success of such a claim impossible. There can be no doubt whatever but that the presumption would be a grossly unjust one if it were advanced in the manner indicated in the section. Mr. Reynolds, however, stated the case so clearly in the remarks which accompanied his draft Bill, that words of mine would be superfluous in support of his contention.

Government letter, paragraph 7.

9. I am decidedly of an opinion that material and practical loss would result to zemindars if the power to acquire rights of occupancy by a ryot were extended to all lands comprised on an "*estate*" as defined in the Bill. The whole difficulty which surrounds this and many other questions connected with the Rent Bill would, in my opinion, vanish if the attention of Government were directed to reinstating not some imaginary class of cultivators, but the class which has hitherto been recognized both by the zemindar and the ruling power: I allude to the "*khud khast*" ryot. If the "*mouzah*" were made the unit within the area of which occupancy rights can be obtained, we should have something definite and tangible to go upon. We should, moreover, have a limit which is understood by the people, and the whole difficulty as to the definition of "*estates*," &c, would disappear. "*Mouzahs*" are well defined and are mapped out; estates on the other hand are scattered in various districts and are seldom mapped. The substitution of the "*mouzah*" as the unit within which the 12-years' right should alone accrue will, I think, avoid all difficulties and furnish a successful solution to a problem which has proved invincible up to the present time. I would, in fact, restore the "*khud-khast*" ryot to the status which he occupied before the Permanent Settlement, with, however, certain additional rights which I now proceed to specify. In the first place, I should give a ryot who has once obtained occupancy-rights of lands within a *mouzah* the right to hold all lands he may subsequently obtain *in that mouzah* as an occupancy ryot, and this not only in the *mouzah* in which he has his homestead, but also elsewhere, so long as he has laid the nucleus of this right by holding lands there for a period of twelve years For instance, a tenant residing in *mouzah* A, and cultivating land there for upwards of 12 continuous years, would hold any lands in that *mouzah* he might hereafter lease as an occupancy ryot. The same privilege would accrue to him in regard to lands held in any other "*mouzah*" so long as he had cultivated land in that "*mouzah*" for 12 continuous years. By this means not only the "*khud-khast*" but the "*pykast*" ryot would in time acquire rights of occupancy. In "*dearah*" country, where lands are liable to be washed away and yet from their peculiar fertility attract ryots, this precaution is absolutely necessary.

Government letter, paragraph 8.

10. With regard to the remarks contained in paragraph 8 of the letter under reply, I would here repeat what I have before said with greater or less emphasis. I would enact that the sale of a *jote* in which occupancy-rights had accrued shall not convey such rights to the purchaser, except in those cases where the *jote* is sold for arrears of rent due in respect of the lands which comprise that *jote*. Unless some such restrictive rule be adopted, my own sincere opinion is—and I am sustained in this belief by a large majority of those conversant with the subject—that in a very few years the present occupancy ryot will have disappeared. I can not too strongly protest against the mischief that is presumably about to be perpetrated against the interest of the cultivating ryot in the very effort ostensibly made to ensure his welfare. It must be remembered that more than 50 per cent., if not a higher proportion, of the tenants are hopelessly in debt to the money-lender. The magnitude of this debt is to a great extent owing to the flimsy nature of the security afforded by the tenant. The motives which have hitherto restrained the money-lender from selling up his debtor is traceable, rather to his knowledge of the fact that more is to be gained from his hesitation, than to any actual regard for the interest of the wretched ryot. The passing of the Rent Bill immediately imparts the right of occupancy to an enormous number of tenants hitherto considered mere tenants at-will. The same law also furnishes the ryots with the power of selling their rights. Under these circumstances will it not infallibly follow, that the local *bunnia* throughout the province will immediately see the advantage of forcing the ryot to transfer his *jote* in part payment, probably of an old debt. It should not be forgotten that the interest charged on the original debt was calculated on the supposition that the ryot had little or no security to offer in return; by this Bill the Legislature proceeds to confer on the ryot a right in the nature of an extremely valuable security, presumably with the only ostensible purpose of ultimately bettering the position or adding to the

usurious gains of the money-lender. In my opinion, five years after this Bill comes into force, more than half the present holders of occupancy rights will have been sold up by the money-lender, and the original occupancy-holder relegated to a position comparatively little better than a serf. In connection with this subject, I ordered enquiries to be made, and a statement was prepared shewing the number of tenants indebted in 15 of the villages in the Chanchal Estate. I had not the establishment to make a detailed enquiry over the entire area of this estate, and therefore selected two villages in each circle to enable me to form some idea as regards the proportion of tenants indebted to money-lenders. The investigation extended to 1,849 families, consisting of 9,408 persons, or between 4 or 5 souls per family; these families cultivated 30,249 bighas of land. The average holding, therefore, per family is little over 17 bighas or nearly 5 acres. They owed at the time of enquiry Rs. 6,764 for rent, or about one-fourth of one year's demand. The annual average rent is Rs. 7-8 per family, or Rs. 1-6 per acre. As nearly as could be ascertained, 1,155 or ⅝ths of these tenants were in debt, and some of them hopelessly so, to the money-lender. About 90 per cent. of these would probably obtain occupancy rights under the new Bill. Hitherto the right has not been deemed transferable in this district, but the moment it is made liable to sale in the same manner as other property under a decree of Court, a large proportion of these debtors will be sold up; or what is much more common, the tenant will be induced to hand over his holding to the money-lender in part payment of his debt, on the promise that he will be allowed to remain in possession of the land on the *adhi* or *metayer* system. The money-lender, once he is let into possession in this manner, soon finds an excuse to dispossess the original holder bit by bit, and eventually the occupancy-holder is reduced to the position of a serf or a paid servant, who is given just sufficient to keep body and soul together, while the bulk of his earnings go towards paying off an ever-increasing debt. In going through a list of tenants in pergunnah Rokanpore, where the average rent paid for land is less than six annas a bigha, I found 133 tenants who, though their names appeared in the zemandari papers as tenants, no longer occupy the lands comprising their holdings. They had long since made them over to the money-lender in part payment of their debt, and had either disappeared from the village or were serving the money-lender in the capacity of a servant, or had sub-leased the holding from him on the *adhi* or *metayer* system. The money-lender had avoided the necessary mutation of names by continuing to pay the rent in the name of the original occupier.

11. The argument which would transfer to the occupancy ryot the rights of free sale is, as I understand, based on the contention that such rights being an ordinary incident of a tenant in most countries, it does not seem to be equitable arbitrarily to exclude a ryot in Bengal from the enjoyment of the privilege appertaining to such incident. The danger, however, attending so radical a change in the existing law should, I think, prevent the innovation. It should be remembered that the occupancy ryot, in accordance with the suggestion made in paragraph 32 of this letter will, to all practical purposes, enjoy the right of sale. He has only to fall into arrears to force a sale, and such sale being for arrears, must carry to the purchaser the occupancy-right. In a subsequent paragraph I have suggested that the landlord should be allowed to eject an occupancy tenant who failed to pay the amount decreed within 15 days of the order; I should, however, permit a ryot desirous of selling his occupancy-right by falling purposely into arrear, to deposit the amount decreed within the 15 days, and yet have the right to insist upon the sale; the deposit in these cases being simply made with the object of preventing ejectment by the zemindar.

Government letter paragraph 9.
Prevailing rate.

12. There is practically no such thing as an universal "prevailing rate" in the corner of Bengal in which I have local experience. It is true the tenant will tell you on enquiry that lands of certain quality pay certain fixed rates of rent, but on investigation this assertion has always proved illusory. In the Malda district, and I believe in the neighbourhood, suits for enhancement of rent of an occupancy ryot on the ground of the "prevailing rates" are conspicuous by their absence; a suggestive proof of the difficulty of working a suit to a successful issue under this clause of section 18 of the Bengal Rent Act, 1869. I have never heard of a single instance where the manufacture of fictitious rates have been utilized with the object of raising the rate of rent of an occupancy ryot in a court of law. The only case known to me of a practice similar to the one indicated here, is where the zemindar, dealing with a body of refractory tenants, induces, generally by illicit means, a dozen of the more leading ryots to make a pretence of holding their lands under rates fixed by the landlord; the body of villagers usually follow the example of their leaders, and the agitation for the moment is allayed. But this process could not even give temporary validity to the "prevailing rates" so created, for none of the tenants would dream of having a *pottah* registered in which these fictitious rates found a place. Even the leading ryots originally cajoled into an acquiescence would show the same aversion in spite of the pecuniary inducement which procured in the first instance their agreement to the terms of the zemindar. Fictitious rates of this class could be successfuly eliminated from the consideration of a Judge if it were enacted that, no Court should accept any evidence of a "prevailing rate" other than which may be gathered from rates specified in a *pottah* which had been duly registered.

13. There can be no doubt, however, that the existence of a number of holdings in a village or *mouzah* paying rents respectively on registered *pottahs*, must, in process of time, create a "prevailing rate" within such limits; and as the registration of *pottahs* is made

compulsory under the Bill, it follows that the "prevailing rate" in a year or so will be a fact easily ascertainable by investigation by the Court: under these circumstances, I think the clause making the "prevailing rate" a reason for enhancement should still be retained in the Bill. The utility of retaining the clause is, that it furnishes the landlord with a recognised standard of rates on which he can base an application for raising the rents of tenants who pay abnormally small rents in contrast to the rates paid by the great majority of the tenants. Though there may be no such thing as a "prevailing rate," yet rents in every village or *mouzah* range themselves under different groups varying generally, it may be, from two annas to a rupee a bigah; far the larger proportion of the tenants paying at the higher rates. The existence of the clause on "prevailing rates" would enable the landlord to raise the rents of the small minority of tenants' holdings at two (2) annas a bigah to an approximation of the rates paid by the majority.

Government letter, paragraph 10. Enhancement by private contract.

14. I am in favour of making on difference in the terms obtainable by a zemindar by amicable settlement, and those which may be afforded him by a suit in Court. In the first place, the registration of these private contracts made compulsory by the law will, to a great extent, prevent ignorance of the ryot being unduly utilized to his disadvantage. But the main reason for my opinion lies in the fact that in practice, when enhancement on a systematic plan is determined upon by the zemindar, he, as a rule, brings half a dozen test cases in Court, and on the result of those cases the enhancement of the rental of the entire village or group of villages would be carried out without the further assistance of the Court. The marked difference in the advantage to be gained by a recourse to the Court under the provisions of the Bill, as now framed, would prevent the landlord entering into any amicable arrangement with that portion of his tenants whose rent he is desirous of raising (possibly with their consent) beyond the limit fixed by the Bill, as applicable to private contract alone.

Chapter V, paragraph 11, enhancement on re-settlement.

15. What the letter of the Secretary to the Government of Bengal objects to as a fictitious, varying, and arbitrary standard of rate, I look upon as a true indication of the real letting-value of land and the true test of prevailing rates. The true letting-value of the land is, in my opinion, the only standard it would be safe to go by, and which is sufficiently elastic to suit all parts of the country. Section 42 deals with the rights of the "*settled ryots*" in respect of the occupancy lands leased to him which have come into the hands of the zemindar either through the pre-emption clauses or through the falling in of tananeies owing to a ryot's death or desertion of the holding. Under that provision, such "*settled ryot*" obtains occupancy rights the moment he enters into possession of the lands. And it is further laid down that he is not bound to pay for lands so leased to him any rent higher than that paid by the previous tenant, unless such higher rent has been fixed by a contract in writing; and all contracts made under this section (42) are made subject to the provisions of section 41: this contract, however, must also be registered and approved by the Registering Officer. In order to judge of the practical effect of these new provisions should they become law, I propose to apply them to a case that lately came under my notice in the estate under my management. Not long ago a tenant enjoying occupancy-rights died leaving no representatives to whom his rights, under the present law, would descend. During his life time he paid an annual rental of Rs. 84; shortly after his death I received applications from various tenants on the estate for a lease of those lands. The rental offered in each case was greatly in excess of that paid by the late tenant, and on enquiry, I discovered that the deceased had sub-let his entire holding to several sub-tenants, and was at the time of his death in receipt of an income of Rs. 156 a year for those lands Under the existing law I found no difficulty in transforming these sub tenants into direct tenants of the estate, leaving them in the possession of their respective *jotes* with a prospect of acquiring occupancy rights in due course. Now, assuming for the time the rôle of a zemindar, let me sketch out the procedure I would in all probability adopt had I to deal with this case under the law as laid down in the new Bill, with this difference, however, that in the present case the tenant must be taken to be desirous of selling his holding. In the first place, I would have to decide whether it was worth while to exercise my right of pre-emtion. This decided in the affirmative, the next question would be the amount to be paid for such purpose. The law as it stands is somewhat hazy as to the rules to be adopted by the Civil Court under which the amount to be paid by me is to be calculated. On the one side I would naturally seek to depreciate the value of the property, urging on the notice of the Court that it had hitherto only paid a rental of Rs 84 a year; that under the law the right of occupancy in respect of these lands, if let to a "settled ryot," will immediately accrue to the tenant to whom I re-let them; that under the severe restrictions placed by the law (section 41) my right to enhance the rent of an occupancy tenant, I could not hope to add much to the rental paid me by the late tenant.

16. Here let me pause for a moment to show that I am not forgetful of the fact that the provisions of the Bill enable me to lease these lands to a "non-occupancy" ryot at their full letting-value. This alterative would, however, in this particular case be valueless. Where, for instance, could I turn to in search of a tenant who would not at the same time come under, the defination, of "settled ryot"? For any tenant who might possibly be induced to lease those lands would, under the definition of the Act, be a "settled ryot," already holding lands in the estate in which these lands are situate. Practically, therefore, I should.

have no choice in the matter, and be forced to have recourse to illegitimate means for the purpose of securing to myself the full rent which would be obtainable by me (the zemindar) could I let these lands unhampered by the restrictions placed on my actions by the provisions of the new Bill.

17. On the other hand, another intending purchaser at the sale, anxious to secure the property to himself, might fairly urge upon the Court the fact, that although it might be true that the land if purchased by the landlord (myself) would be worth to me little more than a rental of Rs. 84 a year, yet to a stranger, unhampered by the restrictions as to occupancy rights, which bind the zemindar alone, purchasing these lands they would be worth a great deal more, viz., the difference of value as shewn between Rs. 84 paid to the landlord, and the Rs. 156 paid by the sub-tenants to the occupancy tenant. With these facts before it, the Court would have to arrive at some decision. It is impossible to say to which side the mind of the Court will lean in estimating an equitable amount as the purchase-money of the property. On the one side it might fairly be urged, that as the zemindar had the right of pre-emption reserved to him by the law, and by the same law his right to enhance has been restricted to almost infinitesimal proportions, that the amount of purchase-money should be calculated in accordance with these considerations; on the other, the fact remains that the power of pre-emption preserved to the zemindar is; optional and not compulsory, a fact sufficient to enable the Court to fix the purchase-money calculated on the real value of the property as represented by the rental paid by the sub-tenants at the time of sale. Probably the decision arrived at would be a compromise between these two adverse considerations, and I, the landlord, supposing I considered it advisable to exercise my right of pre-emption, will find myself called upon to pay a larger price for this privilege than would be considered at all just or equitable.

18. The right of pre-emption given to the zemindar has, I confess, a specious appearance of generosity; but as I have attempted to show, it only requires a determination on the part of the Court to fix the amount of the purchase-money in accordance with the real value of the land, ignoring the somewhat anomalous position into which the unfortunate landlord is relegated by the law, to make the value fixed prohibitory as far as the landlord is concerned, and render this much lauded privilege an useless and empty formality. Another matter in connection with this right of pre-emption merits attention. At the time of sale the Revenue Officer or Civil Court, as the case may be, in calculating the amount of purchase-money, will, as a matter of course, have to take into consideration the so-called ryot's improvements on the land, and this will form, I take it, an appreciable proportion of the sum ultimately settled upon by him as purchase-money; it being but fair that the outgoing tenant should be repaid for any improvement affected in the land at his own cost. The zemindar, should he deem it advisable, or as it will often occur, find himself compelled to exercise his right of pre-emption, will find himself burdened with the payment on account of these improvements; but will under the provisions of the present Bill (clause *a*, section 41,) be precluded from reaping any advantage from the extra outlay. At present it is true there is nothing to prevent the zemindar from retaining these lands in his possession, and farming them himself or leasing them to a non-occupancy ryot. But should the land be situated at a distance from the zemindar's residence, it would not always be possible for him to undertake to cultivate these lands himself. It would in many instances be difficult for the landlord to find a non-occupancy tenant if the definition of the Bill, that all tenants holdings lands for 12 years in any one village of an "*estate*" gives them a right of occupancy over all lands comprised in that "*estate*," be retained. There are many instances in the Chanchal Estate when the entire lands for some miles round would belong to the one and the same "*estate*," and in these tracts it would be impossible for the landlord to find a non-occupancy tenent to whom the newly acquired holding might be leased.

19. Another difficulty in the way of the zemindar exercising his right for pre-emption suggests itself. Take for instance the case (and they are numerous in this estate) where tenants are holding at the rate of two annas a bigha, but who obtain at the rate of a rupee a bigha from the under-tenants. Here, on being afforded the opportunity of exercising my right of pre-emption, I should have to consider the fact whether it would be worth my while to purchase the *jote*, when at the most I could obtain under the law (section 41) would be no more than 2½ annas a bigha from a settled ryot for lands which had in fact yielded a rupee a bigah. Again, suppose a ryot during the continuance of his tenancy has improved his property to the extent of Rs. 200 by digging and making a brick-well; in the exercise of the right of pre-emption, I, the landlord, would have to count upon having to pay at least Rs. 150 for these improvements. In attempting, however, to re-let these lands after purchase to a "settled ryot," the law places a severe restriction on the amount of rent I can claim." The utmost sum so attainable would not be fixed, or indeed be influenced by the fact that I was out-of-pocket to the extent of Rs. 150 for improvements, which moreover, my new tenant would enjoy. These two illustrations, I think, clearly show how illusory is the benefit supposed to be imparted to the zemindar by assigning to him the right of pre-emption.

20. Now to continue our illustration, let us suppose the zemindar to have exercised his right of pre-emption and the jote for the time being his, he may keep the land in farm himself or re-let it again to a tenant known under the Bill as a "settled ryot" or to a non-occupancy ryot. In the former case the incoming tenant is assured of his right of occupancy. The restriction placed by the provisions of the Bill for calculating

the rent to be paid to the zemindar by the "settled ryot" is so stringent, as in my opinion to make the prospect of a settled ryot ever obtaining these lands impossible. The zemindar will, therefore, have recourse to any expedient rather than accept a settled ryot as his tenant under the term imposed by the Bill. Is it, I may ask, expedient that the Legislature should make it the interest of the landlord to keep resident ryots out of acquiring the holdings that may come into his hands, and in this manner increase the area of their small holdings. In the statement given by me (see Appendix), it will be seen that out of a total number of 29,000 tenants in the Chanchal Estate, over 17,000, or 58 per cent. hold less than 5 bigahs or 2½ acres of hand. If sections 41 and 42 are retained, the zemindar exercising his right of pre-emption over any one of these *jotes*, or when the lands reverte to him by death or relinquishment, will naturally be extremely averse to permit any of the neighbouring tenants, or indeed, any "settled ryot" from leasing the lands in question, and thereby affording the tenants the opportunity of increasing the limits of their already lilliputian holdings. The mischief, therefore, in this instance works equally to the detriment of the ryot and zemindar. The result may, I think, be safely predicated. The zemindar, in order to free himself from the restriction placed upon his actions by these sections, will probably seek either to recoup himself for the loss suffered by him with the demand of a large bonus, or *salami*, or he will naturally prefer a stranger non-occupancy ryot to one of his own tenants, or again—and this will be the more usual course—he will find a dummy tenant, a creature of his own, who under his directions, will sub-let to a "settled-ryot" at the full rental, and thus defeat the object these sections have in view.

21. The zemindar having paid an appreciable sum for the re-purchase of his own land, in reletting it he would naturally look to obtaining a return for his outlay with a margin of profit. The law, however, as I have attempted to show, skillfully interposes a series of obstructions formulated with the avowed object of making the zemindar part with his property at a loss; in this dilemma the zemindar will naturally look about for some method of obtaining his desires, or, as he would consider them, his rights, and would not be averse to adopting any expedients, in themselves questionable, or at least not authorized by the law, for the purpose of gaining the object he has in view. One obvious method would of course be the exaction of a *sálámi* from the incoming tenant, and it would be paying a very poor compliment to the ingenuity of the native of the country could we not assume that a hundred similar dodges will crop up like mushrooms, to be utilized for the purpose of evading the law.

22. One of the results growing out of the kind of legislation I have been discussing is, that it puts a zemindar and ryot at arms length at once. The zemindar purposely crippled by the law, fights at a disadvantage, and naturally has recourse to any weapon that may first come to hand to ensure himself the victory. He is powerless theoretically to injure his opponent under the provisions of the Bill. He nevertheless can, as I have attempted to point out, obtain a show of victory with the aid of questionable or illegal expedients.

23. It may perhaps be as well to note the fact that there is no provision in the Bill under which the costs occasioned by a reference to a Registration Officer by a zemindar or a ryot are to be paid. Is the zemindar to bear the whole amount of the additional expense, or is the ryot, who it must be remembered forces, the zemindar into the field by his desire to part with his holding to pay his share of the necessary charges? In many parts of Bengal 75 per cent. of the tenants have occupancy-rights. Therefore the services of the Registration Officer, made imperative under the Act, will be in constant requisition. Again, it is during the rains, when the entire country is under water, that the ryot is specially busy in making arrangements for the acquisition of land for the coming agricultural year; the very time when the difficulty and expense of seeking out the requisite Registration Officer, who alone can give validity to any leases, have been enormously increased. The head-quarters of this officer may be 30 to 60 miles distant, and accessible only at the busiest time of the year by a four or five days' boat journey over an inundated country. I have much doubt whether, in a spite of the provisions of the new Bill, should they become law, the ryot, or for the matter of that, the zemindar, will trouble himself about a visit to the Registering Officer, entailing, as it must infallibly do, additional expense, loss of valuable time, and what is more potent in his eyes, an infinity of trouble, which the ryot at any rate will consider unprofitable and unnecessary. The ryots will very soon begin to see that it is to their interest that the lease should *not* bear the Registration Officer's signature, and the result will be, that the zemindar will be called upon to pay for each lease made with a "settled ryot" a fee that may amount in travelling expenses alone to four or five, and it may be, ten times the amount obtained as an enhancement.

24. It will be useful, I think, at this stage to describe at length the counter-proposals I am in favour of introducing in supersession of that portion of the Bill dealing with the vexed subject of "*enhancement upon the re-letting*" of lands; and this seems to be the more necessary as my suggestions will, in some measure, meet the difficulties mentioned in the concluding sentences of the latter portion of paragraph 11 of the Government letter. In the first place, I would place no restriction on any contract between the landlord and tenant, save in such manner as I shall point out presently. The contract once entered into would, as provided by the Act, make registration compulsory. Further, I would restrict the discretion of the Registration Officer simply to ascertaining from the ryot his knowledge of the contents of the document. As to the contract itself, I would not give a ryot the power to contract himself out of the privilege secured to his status as a ryot, given under the Bill; but the restriction should not in my opinion be made to extend to any supervision over the agreement he may be willing to enter into with his landlord as to the rates of rental. In

making the registration of contracts compulsory, I am not forgetful of the difficulty involved in securing easy access to the Registration Officer mentioned by me in paragraph 23 of this report; it will be incumbent, I think, on the Government if it insists on making registration compulsory to ensure the appointment of a sufficiently numerous body of officers, which will effectually minimise the danger I have indicated. The foregoing remarks, as will be seen, are intended to apply indifferently to occupancy as well as non-occupancy tenants.

25. I now proceed to deal with each class of these ryots separately. First as to *non-occupancy ryots*: I should leave this class of ryots to make their own terms with the zemindar, unhampered by any restriction whatsoever. Now as to the *occupancy ryots*: as has already been stated by me, I would place no restriction upon the occupancy ryot as to the rate of rent he may contract to pay the zemindar upon any amicable arrangement the parties may arrive at out of Court; the registration of the *pottah* in the manner indicated by me being, in my opinion, a sufficient precaution against undue oppression or fraud. If this liberty be not accorded, it opens the door to much confusion, and invites both the zemindar and the ryot to have recourse to illegitimate means for practically carrying out their own wishes which they are precluded from giving legal effect to with the aid of the Court. A hundred reasons may be conceived where an occupancy ryot, without undue pressure being brought to bear upon him by the zemindar, may be desirous of obtaining the lease of the lands in question at rates higher than could be demanded by the landlord under the provisions of sections 41 and 42. If this amicable arrangement be not recognized by the law, it will probably follow that the zemindar, either by the extraction of a large *sálámi* or by a covert agreement for the payment of an illegal cess, or some other indirect means, will obtain the object he has in view; and this, be it remembered, with the consent of the ryot, who not deeming the demand unjust, is naturally willing to agree to the terms which eventually put him in possession of the holding. It may be urged that the ryot once let into possession under these illegal terms could thereupon ignore them and set the zemindar at defiance; in the first place, this mode of procedure if once successful would naturally be productive of ill-feeling between zemindar and ryot, an evil which it should be the endeavour of the law to mitigate than encourage: and further, it may be taken for granted that a trick of that kind would only be played but once upon the zemindar, the insertion of a dummy middleman between the zemindar and the actual cultivator, as already explained by me, would defeat the possibility of a ryot playing false, and moreover leave him in the comparatively unenviable position of an under tenant, when forsooth he would have been willing but for the restriction placed upon him by law to lease those lands as a direct tenant and enjoy in regard to them the privilege of an occupancy tenant. To make my reasoning more clear, let us suppose the following instances:—(A) A ryot relinquishing his holding which lies contiguous to the holding of B an occupancy ryot; (B) applies to the zemindar for a lease of the relinquished holding, and with his experience of the disadvantage attendant upon having a strange neighbour so close to his holding, is willing to pay the rental fixed by the zemindar for the lands. But if this rate happens to be in excess of the rates which the zemindar can, under the law, demand from B both B and the zemindar are powerless to give effect to their united wishes. The zemindar will naturally prefer a stranger, from whom he could demand a higher rent, or create a dummy middleman, one of the numerous hangers-on about his house; and the occupancy tenant will be let into possession as an under-tenant of the creature of the zemindar, paying probably a rack-rent.

26. It may be here objected that these suggestions instead of meeting, rather tend to emphasise the difficulty pointed out by the Government letter in paragraph 11, which notes the possibility of a tendency to level up rents to the highest point. I am aware of the danger, but am prepared to meet it in the following way:—In the first place, I would leave an "occupancy ryot" in quiet possession of his holding after enhancement for a period of 25 years. If this suggestion be adopted, the Government may well afford to be careless about the exact nature of the "prevailing rate" which might be utilized for the purpose of assessing the enhancement of rent; the prospective injury done to the ryot would be amply compensated for by the permission to hold at the rate fixed upon for 25 years. It may, however, be again suggested that the scheme I advocate would possibly meet the circumstances of the ryot holding lands in districts where *jotes* may be had for the asking, and where, therefore, the "prevailing rate" is low but would work excessive hardship on tenants holding lands in the more populated districts in Bengal, and especially in Behar. I have, however, anticipated this difficulty in the following suggestion:—When a zemindar institutes a suit for enhancement of rent on the ground of "*prevailing rate*" or "*rise in prices*," I would in either case give the ryot the option to insist upon the zemindar calculating his enhanced rent in one of two ways; either on the "prevailing rates" of land in the vicinity, or upon the value of the "gross produce" of the land in question. Should the tenant insist upon the latter of these two alternatives, the Court should be directed to restrict the amount of rent, including the new enhancement, to five-sixteenths of such "gross produce." Putting this suggestion to a practical test, let us see the result. In the Maldah district, where lands are plentiful and ryots few, the tenant will infallibly choose to be enhanced under the "prevailing rate;" any *injustice* which he may suffer from the causes hinted at in paragraph 11 will be amply compensated to him by the privilege of holding his lands free from further enhancement for 25 years In Behar, however, the tenant would naturally have recourse to the second of the two alternatives, and insist upon his rent being raised no

further than five-sixteenths of the "gross produce" of his *jote*; such produce to be taken on the staple crop of the district in all cases where no particular crop is mentioned in the lease. If, however, the registered leases mention the area of the land held under sugar-cane, mulberry, jute, tobacco, &c., the Court should calculate the "gross produce" on these crops if the zemindar so wishes it. The danger indicated in the possibility of "occupancy rates" being in time levelled up to "non-occupancy rates" will not make its influence felt in the Maldah district, for it is a fallacy to suppose that the "non-occupancy" pays a higher rent than the "occupancy" ryot. In this part of the country it is just the reverse; the occupancy ryot pays from Re. 1 to Rs. 2 per bigah for lands over which he has a right of occupancy, while in respect of the new lands, over which he has yet acquired no rights of occupancy, he seldom pays more than six or eight annas a bigah. And there are thousands of non-occupancy ryots in this district whose entire holding is held at a rental of 1 to 1½ annas a bigah. *Competition* not *custom* regulates the rent. When land is plentiful and ryots few, rates are necessarily low; when, on the other hand, the population has begun to press upon the average of the country, the rates of rent for the fields that have been longer under the plough are generally higher. In districts like Maldah, where there was more land than cultivators, the "prevailing rate" would be in favour of the tenant, and with a 25 year's lease it would be all that the tenant could expect and all he would himself ask for. In Behar, however, where the "prevailing rate" might, owing to the pressure of the population, be raised to a rack-rent, the tenant would protect himself by demanding that the rental fixed by the Court should not exceed five-sixteenths of the value of the "gross produce."

27. Five-sixteenths of the estimated average on the annual value of the "gross produce" of the staple crop may be a very reasonable proportion, taken with the object of protecting the tenants from a rack-rent in some parts of Bengal, especially in Behar; but in this district it would simply be useless, as it would confer no benefit on the ryot at all. The staple crop in this district is paddy, lands of the first quality yield two crops, viz., paddy and mustard-seed. The value of the *gross produce* would be as follows:—

5 maunds paddy, at Re. 1 per maund=Rs. 5;

2 „ mustard-seed, at Rs. 3 per maund =Rs. 6;

or Rs. 11 in all. Five-sixteenths of this sum would be Rs. 3-7. I have purposely placed the prices and the yield from each bigah as low as possible in order to get an average which will be beyond cavil. In this part of the district the highest rent paid by occupancy tenants is Re. 1-4 per bigah. It will be seen, however, that as far as this district is concerned, five sixteenths of the gross produce would not only be useless, but worse than useless; while in Behar, on the other hand, the "prevailing rate" might be in excess of five-sixteenths of the *gross produce*. A grave objection against the practical working out of this suggestion lies in the difficulty which accompanies the attempt to ascertain the "gross produce" of each field. The gain, however, to the ryot holding lands at an abnormally high rent in the choice left him to have such rent re-settled on the "gross produce" standard is so obvious, that some effort, I think (possibly based on the principle acted upon by the Irish Land Commissioners), might be adopted to minimise the effect of the difficulty indicated by me.

28. The Bill, as at present drawn, does not seem to have made any provisions for cases where an occupancy ryot holding lands in some distant part of the "*mouzah*" (and this remark applies with additional force if the word "estate" be preserved), has only non-occupancy ryots as his neighbours in respect of those outlying lands. This is a circumstance frequently met with, and obviously the calculation for an enhanced rate must be made on the "prevailing rate" furnished by those non-occupancy holdings. The law at present would not permit this, some modification, therefore, seems necessary.

Government letter, paragraph 12. *Homestead* or *Bastu Lands.*

29. I have on more than one occasion reported that homestead land and lands in its immediate vicinity should not, in my opinion, in purely agricultural villages, be enhanced. These lands have been raised above flood-level and otherwise improved entirely at the ryot's own expense; and I deemed it but just that he should be allowed to enjoy the fruits of his own labour. So long as it is rendered impossible for the zemindar to enhance capriciously the rates payable for homestead lands, he cannot, while the land for culturable purposes remains in excess of the demand by tenants, bring undue pressure to bear upon his ryots: once the margin of exaction is overstepped, the ryot can relinquish his arable lands on the estate of the exacting zemindar and seek better terms elsewhere. Secure, so far as his homestead lands are concerned, he can do this with impunity, and thus indirectly prevent his zemindar from pushing his exaction to the point where the ryot's answer to his appeals for further contribution may be the reluctant relinquishment of his land. As was the case in this estate prior to his coming under the management of the Court of Wards, many of the ryots, impatient under the exaction of illegal cesses forced upon them by the late proprietor, sullenly refused to lease lands on the estate and constituted themselves "*pykast*" tentenants of the neighbouring zemindar. The late proprietor had a remedy for this difficulty; taking advantage of the affection which is inherent in many ryots for his homestead lands, he arbitrarily raised the rates of these recalcitrant tenants in respect of their homestead lands to rates sometimes as much as four or five times in excess of the amount paid for these lands for the previous year, the object being to recoup himself for loss sustained by him through the fact of such tenants not choosing lands for cultivations within his estate.

30. The matter is of extreme practical importance in connection with ryots holding lands in this part of Bengal. For such ryot, his right of occupancy once assured in respect of his homestead lands, is emancipated from the necessity of submitting to exactions from his zemindar. Land is so plentiful that the ryot leaving his homestead in security, might prefer to go out as a "*pykast*" tenant, and so cultivate lands under a more accommodating zemindar. Keeping this fact in view, I am strongly in favour of giving *all ryots* occupancy-rights in homestead lands after a residence of *three years*; this step, if adopted, would do more for the protection of ryots than any other provisions in the Bill. I would limit the right to enhance *bastu* lands to the sole ground that the original area held by the ryot has been increased. This precaution is necessary, as the ryot is often addicted to surreptitiously encroaching either on the surrounding waste lands or on an abandoned homestead lying contiguous to his own holding Further, it might be a matter for consideration whether the right to enhance should not revive in the case of a ryot sub-letting a portion of his homestead lands.

Chapter , section 52, paragraph 14. Price lists.

31. With regard to price list. I see very many difficulties in the way. They are now prepared by the police, but assuming that they were perfect indices of the prices prevailing at the "hâts" or various local markets they would not, I think, be anything but misleading. It would, in my opinion, not be safe to attempt to collect the prices of every local market in the district. All these local markets feed one big market, and the prices of these local markets are ruled by the prices ranging in these big grain marts. It would be sufficient if the prices at these large markets were taken, and they would give a much better test as to any *general* rise in prices in the neighbourhood than those of the local markets which are influenced by temporary fluctations owing to local causes. In this district, Rohanpore in the south would give an accurate indication of the prices current throughout the entire south of this district. While Hyatpore, or Kiddergunge would furnish similar returns for not only the north of this district but the south-western portion of Dinagepore and the south-eastern portion of Purneah. In the same manner, Revelgunge, in my opinion, would meet the requirments for nearly the entire Patna Division. while the large grain mart at the mouth of the big Kosi river would answer for the entre west of Purneah and the east of Bhagulpore. It will be necessary, however, to make it quite clear that the calculation to be made by the Court with the aid of these *price lists* should be based on the lowest prices indicated for each year. For it must be remembered that a tenant sells his crop at harvest-time to enable him to pay his rent, and prices at that time are at zero.

Chapter V, section 31.

32. Before leaving Chapter V, I desire to make a few remarks on the subject of ejectment, which I note has been omitted from the list of incidents given in section 31 of the new Bill. A ryot apparently under this section (31) may not be ejected from lands in which he has a right of occupancy for arrears of rent. This provision is based on the erroneous fact that the sale of all occupancy-tenures will enable the landlord to cover at least one year's rental; but it is notorious that this is not so, and I am only surprised how the Select Committee could have overlooked this fact. Out of 29,000 holdings on this estate, I have not the slightest hesitation in stating that if you were to put up 20,000 for sale to-morrow you would not get a year's rent—not even half a year's rent for them. And if 12 years residence is to entitle a ryot to right of occupancy in all lands held in that "estate," certainly 20.000 out of the 29,000 holdings would have to be treated as right of occupancy holdings. It seems to have been taken for granted that provisions which are suitable to one part of the country are equally suitable to all, and no greater mistake can be made as to Bengal. I have not the slighest doubt that there are many districts in Bengal, especially those near Calcutta, where an occupancy-tenure would fetch 3, 4 or even 5 years' rental. I am aware that even in this distrit there are occupancy-tenures that have been valued and sold at 3 years' rental; but this is an exception and not the rule, and it stands to reason it must be so. In a district like Maldah, where there are large quantities of culturable land still unoccupied, what inducement would there be to a tenant to pay even one year's rental for a holding in those villages where there is still a large margin of unoccupied land when he can get as much land as he pleases with equal advantages as to situation and fertility for the mere asking, and almost invariably at a much lower rate? I attempted to realize decrees for arrears of rent by the sale of holdings on the estate, but I was forced in self-defence to resort to a body-warrent and other means open to me in execution of a large portion of the decrees obtained under the certificate demand (Act VII of 1880). A considerable number of the decrees are for small sums, and the costs often exceed the amount in arrear. In the 86 cases in which an attempt was made to realize the decree by the sale of the holding itself, the amount they fetched at the sale was not sufficient to cover even the actual out-of-pocket costs in the case. In the 86 cases mentioned above the actual arrear amounted to Rs. 463 and the actual out-of pocket costs amounted to Rs. 349, while the sum realized by the sale was only Rs. 178. Mr. Reynolds states in his dissent attached to the report of the Select Committee, that the sale of tenants' holdings is "ample security" to the landlord for his rental. However true this may be for districts in Eastern Bengal, it is notorious it is not so in Maldah, and for the matter of that, in any district or portion of a district where the culturable land is in excess of the demand. Another and a very potent reason for the holding not fetching a higher price is, that these sales under the law must take place at the Sudder station, it may be 20, 30, and even 60 miles away from the village where the lands are situate. The most

likely purchasers of the *jote* are the resident cultivators of the village where the land is situate, and these are the very men who, it would be to the interest of the landlord, and for the matter of that the community at large, should purchase these *jotes* and thus enlarge the area of the existing holdings. But the sale takes place at a considerable distance from the village; the date of the sale is not advertised in the village where the lands are situate, and intending purchasers resident in the locality would hardly, if ever, be in a position to attend the sale, and so the holding is knocked down for a trifling sum far below the value set upon it in the village where the lands are situate Thus, not only is the tenant deprived of the full value of his tenant-right, but the landlord is unable to realize his arrears. In cases where the holding is situate within a reasonable distance of the place of sale (the Sudder station), the sums offered often exceed the amount in arrear. For instance, in 132 cases where the holdings put up for sale were within a distance of eight miles, or a day's journey of the Sudder station, the amount realised at the sale of 64 cases amounted to Rs. 912, or sufficient to clear a year's rent and the costs of the suit; but in 68 cases the amount realised was only Rs. 52, or insufficient to cover the amount in arrear. I would retain the right to eject in the case of non-payment of rent; but I would allow no ejectment except in cases of arrear where some portion of the balance has been due for over 12 months. When a decree for arrears is given, the landlord should be allowed to claim an order for ejectment if the arrears are not paid up in 15 days from the date of the decree. The tenant, however, might claim a sale on depositing the amount of the decree in Court; this procedure would not only permit a tenant obtaining a full value of his holding, but would in many instances obviate the intolerable delay now attending the execution of a decree; and would effectually hinder a recusant tenant keeping possession of his holding, pending such execution, and by this means prevent the landlord from re-letting the lands to a more solvent ryot.

33. The only ground on which ejectment is permitted in the case of an occupancy holding, is for breach of registered contract. I am of opinion, and I hope I have now made the matter clear, that in respect of this part of the country, ejectment must be permitted for non-payment of rent. I am also of opinion that ejectment should be permitted for breach of contract. With respect to the proviso that such contract must be registered, I take it, the Bill refers to all future contracts that may be entered into subsequent to the passing of this Bill; it would act very unjustly on existing contracts if this were not so. Unless ejectment is allowed for breach of existing contracts, whether registered or not, what remedy has an indigo planter in the case where he has permitted his tenants to acquire rights of occupancy; it may be at a very much lower rate than that prevailing in the neighbourhood, on the understanding that the tenant sows a certain portion of that holding in indigo, and on his failing to do so he must relinquish his holding; and supposing after the passing of this Act the tenant refuses to sow indigo any longer? Then, again, it is the custom when a *Hari* or *Dome* (both low caste Hindus) wishes to settle in a village, that a clear understanding is come to that they are not to keep pigs unless the pigs are secured within an enclosure. This is found necessary not only to prevent damage to the tenants' crops, but on account of the Mahomedan tenants, who naturally object to the pigs coming about their homestead. A *Hari* or *Dome* disobeying such order is forthwith ejected from the village, but it will be difficult, if not impossible, to do so unless ejectment were allowed in cases where there is a clear breach of contract.

34. Some provisions will, I presume, have to be introduced into this Act, giving the landlord, or it may be a body of tenants, the power to take up lands for the purposes of a new road, drainage or other local improvements. Under the present law the right of the landlord over his own property is placed under such severe restrictions that it would be always possible for a ryot with the new privileges given him by the Act to interpose a successful opposition to the desire of his landlord or the larger number of his co-tenants to carry out these improvements when land for the purpose has to be taken up from ryots' holdings: some such procedure as directed under the Land Acquisition Act seems the best calculated to meet this difficulty. At present, a landlord can of his own motion provide lands for roads, drainage, burial grounds, sites for markets, and other local conveniences; he would probably find this impossible after the passing of the present Bill.

Government letter, paragraph 18, Chapter VII, section 61, clause 13.

35. An instalment of rent, or part of an instalment, not paid up on the due date, is under this section to be considered an arrear of rent. I have in a previous paragraph of this report (32) recommended the retention of the right to eject a tenure-holder or an occupancy tenant for arrears of rent. I would restrict the right to eject in suits for arrears of rent to those cases only where the balance due has been over 12 months in arrear One of the causes which, in my opinion, has conduced to forcing many of the cultivating tenants into the hands of the money-lender is, the power granted to landlords to sue for instalments of rents. The capabilities of the tenant to meet the demand are seldom taken into consideration when fixing the dates on which each instalment should be paid. The dates fixed upon are, in most cases, determined solely to enable the landlord to meet the Government revenue payable on the 28th of June, 28th of September, 12th January, and the 28th March; and the dates fixed were determined on at a time when nearly all rents were paid in kind, and all the tenant had to do was to hand over a fixed portion of each crop as soon as it was reaped. Though the tenant in these days are expected to pay their rents in four instalments, arbitrarily fixed to enable the landlord to meet the Government demand, practically the tenants are only able to pay their rents in one, two or three instalments according to whether the lands occupied by them

yield one, two or three rent-paying crops, and the most convenient date on which these instalments could be paid depends entirely on the rent-paying crops sown in any particular tract of country. In the generality of cases the dates on which the instalments of rent should be paid were fixed at a time when the tenant could only look to the local markets for the sale of his produce, and his entire rent was paid from the surplus produce of his rice-lands. But as new lines of communication have been opened up each year, and facilities for export created, the tenant is now able to raise crops to meet the demand of more distant markets. Such crops as jute, tobacco, oil-seeds, and wheat, which in former days were only sown, if at all, for home consumption, are now cultivated for export, and are the chief crops from which the rent is paid. For instance, a tenant who had hitherto paid his rent by the sale of his surplus produce of winter-rice, would find it most convenient to pay his rent in January or February; but if this same tenant had now placed the larger portion of his holding in wheat or oil-seeds, he would not be in funds till March, or it might be in April, some two months later than was previously the most convenient date to him for meeting his landlord's demand. Moreover, a tenant would much prefer to pay his rent from the sale-proceeds of such crops as jute, wheat, tobacco, mustard-seed, &c., &c., because for such crops there is at all seasons a demand and a fixed market-rate, while for rice the demand is confined to such seasons as will permit of the produce being exported by the cheapest means of export, viz., boat traffic. Should the tenant be forced to sell during the dry season, he would have to carry his produce to a local money-lender, who would be able to make his own terms, owing to there being no competition. The tenant of the present day, therefore, pays the whole or the greater portion of his rent from such crops for which he can find a ready market, and keeps the produce of his rice-lands in stock, selling small quantities at each market-day to enable him to purchase his daily wants; and delays to dispose of the bulk of the crop till there is a rise in the market owing to competition of itinerant buyers who come up in boats when the floods are out.

Section 69, clause 2.

36. I would, in the interest of both landlord and tenant, insist that no payment be applied to any arrear above two years standing. Ryots, as a rule, never dream of appropriating their payments to any particular arrear of rent, and the zemindar naturally sets off such payment against a debt which may have already been barred by limitation; the insertion of a clause such as I have suggested, will ensure accounts being made up every other year.

Section 69, clause 2.

37. I am decidedly of an opinion that the word "shall" should be substituted for "may" in this section. I should make the award of damages compulsory instead of discretionary, the reason being that the Courts never exercise a discretion in the matter but invariably refuse to grant damages. If this matter were taken out of the discretion of the Court, and made imperative, it would facilitate the collection of arrears and thus indirectly give the zemindars a chance of getting in their arrears without difficulty. I speak from some experience in the matter, for I know numerous instances where a Court being induced in one or two suits to grant damages, the whole village has immediately paid up its arrears. I may also mention the case of an estate where the arrangement between the ryot and zemindar that if the ryot paid up regularly he would be entitled to a receipt in full of all rent due under the registered *pottah*, although, as a matter of fact, the actual money was one-fourth less than the rent specified in the "*pottah*;" the result of this arrangement was, that throughout a period of seven years the papers examined by me did not show arrear balances of more than five hundred rupees on a total demand of thirty-one thousand rupees.

Government letter, paragraph 23, section 86. Illegal Cesses.

38. The question of cesses is a difficult one, and in the determination of which actual facts more than abstract ideas should be taken into consideration. At the time of the Permanent Settlement, the system introduced by Toder Mull of a measurement and re-settlement of lands held by each individual tenant or occupier after certain intervals of time, was in full force. After the Permanent Settlement, however, no necessity existed for the Government to trouble itself further in the matter; the duty was left to the zemindar, who was either too apathetic or found it an easier task to increase his rental by the illicit imposition of "*abwabs*" and cesses to make it even desirable or politic himself to enforce a rigid re-measurement of the holdings within his property and establishing a periodical revision of the "*nerikbandi*." In fact, the desire to encourage periodical measurements and re-assessments of rates was absent from the zemindar as well as his tenant. The former, as has been already explained, found it easier to increase his rent-roll by the manner already indicated; and the latter was just as anxious to prevent the discovery of the excess quantity of lands which he had gradually added to the area of his original holdings. It is curious, and somewhat instructive, to remark how throughout the long series of years since the Permanent Settlement the system of extorting "*abwabs*" and cesses has flourished in spite of the folios of regulations directed by Government against the practise. If criticism may be regarded on this subject, I might point out that if some of the energy which expended itself so liberally in the manufacture of legislative enactments had been directed towards securing the appointment of some speedy and cheap Court, constituted possibly on the lines of the present Court of the Land Commissioners in Ireland, with the object of settling what should be a *fair* and *equitable* rent payable according to circumstances, by each tenant to the zemindar, the imposition of "*abwabs*" would never have flourished and become, as it has done, one of the settled institutions of this country, overgrowing and, indeed in most districts, choking out of existence the ordinary and legitimate law relating to enhancement of rents. The zemindar's portion of the *unearned increment* has hitherto been obtained in

these cesses. Any sudden determination on the part of the tenants to refuse payment of cesses that have been paid by them hitherto without demur, would deprive the landlords of a large portion of their rental, and force them to seek a remedy in a measurement of individual holdings, and assess the excess area it was known these tenants have hitherto enjoyed in consideration of "*abwabs*" and cesses paid by them. These measurements and consequent suits for enhancement will doubtless lead to a certain amount of friction between landlord and tenant, and will have to be carefully watched. The rates of rent in this district are, in my opinion, exceedingly moderate, and even if the cesses are taken into consideration, can in no way be looked upon as a rack-rent. Few zemindars, I believe, would object to a revision of rents by Government assessors, for there can be very little doubt that lands in most parts of Bengal Proper are not rack-rented, and a considerable average advance in the rental would be obtained; and I feel confident that a free use will be made of the provisions of Chapter X of the new Bill. It is not difficult to imagine what, under these circumstances, would be the result if all holdings were re-valued by disinterested authority. In the majority of instances, probably in nine cases out of ten in Bengal Proper, the rent would be increased in a large portion of the older holdings, giving rise to an amount of disappointment or discontent it might be awkward hereafter to deal with. The Government, I take it, has foreseen, and is prepared to meet this difficulty. I am, however, of the opinion that in cases where the landlord elects to have the rates fixed by the executive authorities under Chapter X, and a regular settlement is come to, that the rates so fixed should be binding (section 120) not for 15 years, as proposed in the Bill, but for at least 25 years, and I would be inclined to say 30 years. I do not see that the Government is called upon to incur all the odium, as it most assuredly will incur, in making a settlement of this kind, unless the settlement is to last more than 15 years.

Government letter, paragraph 19, Chapter IX, section 88. Improvement.

39. I notice the law is very careful to lay down rules for the guidance of the Court for granting compensation for all improvements made by the tenant, who is to have full authority to make any improvements he may deem necessary without the least hinderance on the part of his landlord. But I do not observe any provision made in the law for cases where the tenant either *bonâ fide* or *mala fide* should, under cover of effecting improvements, destroy the face of the land or reduce its selling value and then relinquish his holding. If it is right, as I fully admit, that the tenant who has laid out money or labour on his holding and materially augmented its value, should be repaid for the permanent or unexhausted amount of this augmentation, according to an equitable scale, on receiving notice to quit, it is but a correlative and obviously fair proposition that the tenant who, on surrendering his holding shall have been found to have greatly deteriorated his landlord's soil, ought to be called upon to repay him for this deterioration. If I let a tenant 15 bigahs of good rice land, and he destroys its character and impairs its value by digging it up for mulberry field, and returns it to me after a number of years' occupancy overrun with weeds, the soil utterly ruined by the exhaustive nature of the crop, want of manure, and a vicious system of husbandry, have I not an indefeasible claim against him for the damage done just as if he had actually annihilated a portion of the area instead of merely injured the whole area in quality? And is it not the case that instances of deterioration are at least as frequent in Bengal as instances of important tenants' improvements.

40. It is urged that as all improvements and reclamation of lands are habitually made by the tenant and not by the landlord it is unjust to permit the owner of the soil, at his pleasure, to dispossess the tenant before he has had time to reap the benefit of the labour and capital he has expended on his holding; granting the premises, the argument in the eye of justice is irresistible. There is, however, one class of expenditure on improvements wholly incalculable, but unquestionably very large, which has been strangely overlooked, yet with which many of the landlords of Bengal ought obviously to be credited, *namely*, the outlay of occupants who hold under "improving rents." The case is a very common one, and the equity of the matter is very clear as soon as it is stated. Two landlords in adjoining districts or pergunnahs, it is indifferent which, lease their lands on two distinct systems. The one follows the English plan; clears the land of jungle; raises a bund or cuts the drain, charging as rent the full estimated value of the holding: in a word, he does all the improvements and gets credit for them. The other, adopting the system which has prevailed in Bengal from time immemorial and which, for obvious reasons is the only one suitable in districts where there is more land than cultivators, leaves his tenant to undertake all the outlay, *but fixes a lower rent in consideration of his doing so.* The former proprietor lets the land at Rs. 3 per bigah, the latter is content with Rs. 1-8 a bigah. It is clear, however, that the latter has virtually expended Re. 1-8 a bigah yearly on the land, or paid his tenant for doing so, and the former has probably done no more. Yet, not only is the one man praised as an improving landlord, and the other blamed as a stingy, grasping, or neglectful one, but in the latter case the tenant gains all the credit of the improvements made virtually with the landlord's capital, and it is now proposed to permit him to put forward claims for compensation on account of them if he is ever required to surrender his holding. Now this is no ingenious supposition; anyone who has had any practical knowledge in the management of estates in Bengal knows scores of instances of under-rented lands of which no other explanation can be given, and the comparatively low rates mentioned in old leases were obviously, and sometimes avowedly, fixed on the understanding that the tenant, and not the landlord, should be responsible for the necessary expenditure of reclaiming the lands.

41. I would allow no distraint in the case of resident cultivators, as I am of opinion the landlord would have sufficient security in these cases in the right to object for non-payment of rent and the sale of holding; but I would retain the right of distraint in the case of non-resident or "*pykast*" ryots. In the case of non-resident tenants, the crop on the ground is the only security the landlord has for his rent. There are for instances, some non-resident ryots who come from a very great distance to cultivate land. They are locally known as "*dotewars*" or "*ganqotees*." There are about 1,800 to, 2,000 of these men who cultivate lands on the Chanchal Estate; some of these come from Bhagulpore and even from Durbhungah. They drive their cattle down as soon as the rivers begin to fall, buy their ploughs at the nearest market, and run up a small hut with the reeds growing on the bank of the river, and cultivate the newly-formed lands Directly the river begins to rise, these men return to their homes to cultivate their high lands for paddy. The only security a landlord has is these cases is the crop on the ground, and unless the landlord is on the spot, he will lose his rent, as these men sell the produce to *mahajans* who come almost to their very fields in boats, and are away and out of the district without having paid a single pice of rent. I would, however, insist on a verified statement of the arrears due being filed in the Munsiff's Court at the same time as the distraint is made, and I would allow no distraint without an account showing clearly for what arrears the distraint is made. I would make a distraint without the filing of these accounts penal. Prior to the distraint an account must be served on the tenant showing the total amount due from him, and also the amount of current rent for which distraint is made. The notice of distraint to be in writing, and to contain the amount in arrear; the current and arrear balance shown sparately; the number and boundaries of the field to be attached for the payment of such arrear. A duplicate of such notice to be posted to the Munsiff having jurisdiction on the same date on which the notice is served on the tenant.

Government letter, paragraph 25, Chapter XIII Distraint

42. I think this section, as at present drafted, will work unfairly against the interest of the ryot. If the "*mouzah*" instead of the "*estate*" be accepted as the unit within which occupancy rights may accrue, I do not see why any difference should be made between *dearah* as opposed to other lands in the matter of the status or privileges of an occupancy ryot. It is more than necessary that when possible the ryot cultivating *dearah* lands should enjoy rights of occupancy. It is on lands of that class that the zemindar and indigo planter are specially anxious to secure a hold, and much of the oppressions suffered by the ryot through this cause is attributable to the weakness of his position as a tenant-at-will. The *dearah* ryot has never at any time a very plesant time of it, though in the end he is in some measure comforted by the richness of his corps. He has to struggle against evils of enforced labour as demanded from him by the planter; the opprssions of the zemindar; and the exactions of the *ameen* who comes twice a year to measure his crops: in addition, he has to submit to the wayward caprices of the river on whose banks his lands are situate, often being compelled to follow large slices of his fugitive holding to their even then transitory resting place on the further bank. These considerations ought, I think, to point to the absolute necessity for giving the *dearah* ryot the power to establish his right of occupancy over any future portion of the land forming part of the *mouzah* on which he had already secured a holding which had given him the status of an occupancy ryot It would also tend greatly towards placing the ryot in a position to protect his interest, if the Bill were to make it perfectly clear (what I believe to be now the existing law in regard to tenures) that all accretions to the holding of ryot should be considered a part of his original holding over which he, if he so choose, may exercise the right of possession.

Government letter, paragraph 29, Chapter XVII, section 213.

43. The necessity for an unmistakeable statement of the law in the manner indicated will be apparent from the following illustration:—The original holding of a ryot reaches down to the extreme verge of the river; the absolute edge of this holding is unculturable, but the soil nearest this narrow strip of useless land is the most valuable portion of his holding: as he proceeds further away from the edge, the land proportionately decreases in fertility, till you reach the further limit of the holding, which may be a barren ridge of sand. Both the zemindar and the indigo planter have no difficulty in discovering from the set of the stream on which side of its bank the river is likely to re-form. All the ryots' holdings therefore which happen to comprise this strip of the bank become a keen object of attention. The *modus operandi* by which the zemindar or farmer secures his object, namely, the possession of the first, and as I have shown, the most fertile strip of land nearest the river, is as follows:—The ryot, who generally completes his sowings by November, lays down his crop as near the water edge as he can conveniently go; as may be supposed, however, between that time and the following June, when the river first begins to rise again, the gradual recession of the river has left a fringe of land for the time uncultivated. The landlord in due time steps in and scatters a few seeds on this unoccupied fringe; this is not done with the object of obtaining a crop, for the first rise of the river will destroy his plants, a fact very well known to him, and duly calculated upon. His intention, however, becomes apparent in the following year, when a further recession of the river leaves what was last year's lowest strip high-and-dry, the best portion of what would have been under ordinary circumstances the ryot's holding had not his landlord stepped in in the manner indicated and cut the ryot off from his right to enjoy the accretion to his own holding. The ryot with right of occupancy, and with the knowledge of the fact made clear to him by the law, that such accretion should belong to

his holding, would be then strong enough to resist this act of high-handed oppression which, as things now stand, is constantly practised by many planters. The evil is a wide-reaching one, and the adoption of some remedy, similar to the one I have suggested, will do much to mitigate the injustice of what is an undoubted source of much discontent. I omitted to note in its proper place what is an important fact connected with this subject, and that is the gradual deterioration which constantly is at work on the original holding of the ryot cut off from the river bank. Unless the ryot be allowed to follow the recession of the river year by year, and thus acquire new and fertile lands, he soon discovers that the original site of his old holding has lost its productive powers, and is no better than a waste of sand, useless till the next change in the course of the river covers it once more with a thick layer of fertile deposit. It, therefore, follows that the action of the planter or zemindar in cutting off the ryot from the river frequently results in eventually starving out the ryot from his original holding.

Paragraph 33, sections 213-214.

44. Under the *halhasilah* tenure, the tenant pays rent for only such lands as he may cultivate each year. The land is held year by year and the rent is regulated by the quantity of land cultivated each year. In earlier times the entire holding, with the exception of homestead lands, were relinquished and allowed to lie fallow every three years. The whole village acted in concert under the authority of the "mandal" or head-man. For instance, the lands to the east of the village were cultivated for three seasons, while the lands to the west lay fallow, and were used as a grazing ground for cattle. After a lapse of three years the land to the west was brought under cultivation, while the land to the east lay fallow, and so on, alternately. It is manifest that such a system can exist only where there is more land than cultivators, and must necessarily disappear where there is a greater demand for land, owing to the increase of population. Hitherto the quantity of culturable land lying fallow has made it a comparatively easy process for the tenants in this portion of the district to chose different plots of land for cultivation every three years. Each year, however, the demand for land is increasing, and the old custom of choosing varying sites for cultivation is being perforce discontinued or restricted to a very great extent, the tenant being in no way certain that the portion relinquished by him will not be occupied by another before the year is out. Gradually, as the population increased, it became necessary to retain some portion of the land under cultivation continuously, and as it may be supposed, the most advantageous qualities of land, either as to situation or fertility, were the first to be picked out. In this manner the more distant or the less fertile lands being exchanged as heretofore every year. The margin of land it is possible to exchange has been gradually decreasing each year, while the portion that has to be kept continuously under the plough is increasing in equal proportions. The rent is generally paid in a lump, that is to say, Rs. 20 for 40 bighas of land, giving an average rate of eight annas a bigah all round, and no attempt is made toassess each particular field. Consequently the tenants' *farruks* (annual rent-receipts) show clearly that the rental has fluctuated, if not every year, certainly every three years. And as the leases give no boundaries, nor make any attempt to identify the land, it is not possible for the tenant to show, except by parole evidence, what portion of his holding had been continuously in his possession for over 12 years; though it is evident from the description given above, that his homestead lands at least, has been in his possession continuously since the time when he first settled in the village, it may be 30 or 40 or even 60 years ago. And he would continue to hold a larger area of his holding continuously as the population increased each succeeding year. Eventually the position of the tenant would be much as follows:—In a holding, of say, 20 bighas, he would have held two bighas of his homestead lands, say, for upwards of 30 years; another 5 bighas he would have held for upwards of 12 years, while the remaining 13 bighas he would have held for periods varying from 3 to 10 years.

45. The incidents of a *halhasila* tenure, however, vary according as the land, the subject of such tenure, is situate, on the immediate banks, or remote from the proximity of a river. In the former case riparian-holders never relinquish altogether their rights to the lands they cultivate year by year, the arrangement being that the tenant, in return for the privilege given him of retaining a lien over that portion of his holding he finds it inconvenient to cultivate, has to pay his landlord a small rental on each bigah of the unused lands, usually calculated on the supposition that the land has yielded a single crop during the year. The following illustration will convey my meaning more clearly. A riparian-holder for the first year cultivates, say, a hundred bighas of land; his rent for that land would be calculated on the fact as to whether he has taken one or more crops off his fields during the year. In the following year the tenant only cultivates 60 bighas of his entire holding, leaving 40 bighas fallow. If the holding were situate inland, and exposed only to the spill of the river, the zeminder in this case would have the right to possess himself of the 40 bighas relinquished by the tenant, and to let them, if he could arrange to do so, to some other tenant; while on the other hand, if the holding comprised part of the bank of a river, the zemindar would be debarred from exercising this right, but as a recompense for the loss of this right he would be entitled to demand a rental for the unused lands, equal in amount to what the tenant would have had to pay had he reaped a single crop from these lands. It does not follow, however, that the incidents of a *halhasila* tenure, as already explained, are subject to no modification. In a variety of instances the custom which generally holds good in respect to riparian holdings is found existing further inland. A result which might naturally be said to accompany a tenure in itself necessarily

transitory, and affording ample opportunity to the zemindars and ryots to vary the nature of the implied contract between them in accordance with the circumstances of each case; giving an opportunity to the one or the other to insist upon terms which it would be dangerous to refuse. When, for instance, the candidates for leases are plentiful, the zemindar can, and often does, insist upon a tenant, whatever be the situation of his land, paying the full rental for the entire holding held by him, whether under cultivation or not, while on the other hand, when tenants are scarce and the slightest pressure may drive a ryot out of the estate altogether, the zemindar often in the case of riparian lands, has to accept such rent as the tenant choses to pay; an amount generally limitted to the number of bighas in actual cultivation.

46. These being the principal facts connected with the *halhasilah* form of tenure, it remains to be seen how they are affected by the provisions of the new Rent Bill. Section 214 affords a concise answer to this question, and if I interpret the intention correctly, lands held on either of the systems known as the *utbandi* or *halhasilah* tenures are excluded from the operation of the Bill altogether. The question naturally arises, if this be the case, under what law will the respective rights of zemindar and ryot in districts where the *halhasilah* system prevails, be adjudicated? For instance, how is the question whether a *halhasilah* ryot can obtain occupancy rights to be definitely settled. In connection with this subject I will quote some remarks made by me in a previous report which, although confined to the cases of ryots holding lands under my management, give a sufficiently clear description of the difficulties attendant upon establishing the ryot's legal position under the present law. "The facts already stated point, I submit, to the conclusion that the *halhasilah* ryots belong pre-eminently to a class of cultivators to whom the privilege of rights of occupancy should be extended. In the position of original holders of the soil which they may have probably reclaimed from jungle, their rights, when secured, should be preserved to them with the most jealous care. But unfortunately, owing to the peculiar tenure under which they hold these lands, and furthermore from the custom of paying their rents in the lump, thus necessitating their holding being treated as a whole; and the fact that their annual rent receipts or '*furrucks*' show on the face of them constant fluctuation owing to the very nature of the tenure under which they hold their lands, making it difficult, if not impossible, to prove what portion of their lands has been in their continuous possession, it has come to be considered a matter which admitted of no argument, at least as far as this district was concerned, that under the *halhasilah* system no right of occupancy could accrue. If under section 6 of Act VIII. (B. C.) of 1869 (which defines the status of an "occupancy ryot") can be included tenants who lease lands under the *halhasilah* tenure,* it may be roughly stated that at least two thirds (⅔) of the tenants of this estate have already obtained occupancy rights over a large portion of their holdings. There remains, of course, the initial difficulty which the ryot would have to meet in proving to the satisfaction of the Court, the identity of the lands over which he asserted he had acquired occupancy rights. The rent-receipts obtained from the late proprietor would not avail him for this purpose; nor will the rent-receipts, obtained from the Court of Wards previous to the year his lands were measured and re-settled, help him in his difficulty. Receipts subsequently to this period granted by me bear on the face of them the numbers of each respective plot of land held by the tenant, and those receipts might probably be utilized as evidence corroborative of his assertions. As a rule, however, the tenant is singularly careless in the matter of accumulating evidence with this object in view. He neglects, and even refuses when offered, to receive a written lease, generally asserting that he is quite satisfied with a parole engagement. Efforts have been made from time to time to remedy this defect, but it has been found impossible to induce the majority of the ryots to adopt the suggestion of the Court of Wards in this matter, and latterly I have, under the instructions from the Board, desisted from all attempts to force upon the ryots the acceptance of a *pottah*, or the giving in return a *kabulyat*. I adopt the precaution, however, of insisting upon the ryots' signatures being invariably appended to the jamabandi papers. But as stated before, the yearly receipts contain the numbers of several plots in the occupation of the tenants for that year. A reference to the several yearly receipts would show clearly that plots had been in the tenant's possession for over 12 years."

47. These remarks, it should be remembered, were only intended to apply to tenants holding under the Court of Wards. The difficulties and dangers which assail the tenants' interests, in the manner already described, are intensified in the cases of ryots not holding under a landlord inspired by the benevolent solicitude, which may fairly be said to characterise the policy of the Court of Wards towards their tenants. This difficulty will not be met if indeed the subject is not further complicated by the introduction of section 214 of the new Bill; the respective rights of zemindar and ryot being left in greater obscurity than before.

48. Although it may be asserted that these tenures carry in themselves the stamp of ultimate dissolution, it is nevertheless equally certain that throughout a large portion of the districts where this tenure prevails the amount of waste land still awaiting cultivation forbids the hope that the *halhasilah* system will not continue in vigorous existence for many decades to come. Further, the modification of this system, peculiar to riparian lands, will probably

* Since these words were written I have received instructions from the Board of Revenue to consider *halhasilah* tenants as capable of acquiring rights of occupancy.

continue as long as the rivers occupy their present sites. It therefore, I think, should be a matter for serious consideration whether an additional chapter in lieu of sections 213-214 should not be inserted into the present Bill, with the object of legislating in greater detail on the rights and customs of *halhasila* and *utbandi* tenures. It is not easy to indicate the precise nature of the legislation requisite to meet the circumstances of the present case; I therefore make the following suggestions with hesitation. In the first place, I should not exclude *dearah* and *halhasilah* tenures from the operation of the Act (sections 213-214). Further, I should give every *halhasilah* ryot right of occupancy over lands which he cultivates; this, indeed, seems to have been in the minds of the framers of the Bill when they inserted clause 3 of section 26; and for my part the difficulty seems to be met by the simple process of striking sections 213-214 out of the Act. The third clause of section 26 ought, however, in my opinion, to be altered, so as to prevent any right of occupancy continuing in respect of lands relinquished by the tanents under the *halhasila* system; that is, in all *halhasila* tenures the right of occupancy should be made concurrent only with the period during which the tenant cultivates the land himself, and that the right determines so soon as the lands are relinquished. The following example will illustrate my suggestions more clearly.

49. A resident ryot, we will say, shortly after the passing of this Bill, takes a *jote* of 60 bigahs under the *halhasila* system; the following year he only cultivates 30 bighas of the holdings, practically relinquishing the other moity, which under the custom in vogue in regard to these tenures would revert back to the zemindar; but under the provisions of the Act such resident ryot would have already acquired a right of occupancy in those unused lands. The zemindar, therefore, could not get possession of them, though he might have a tenant at hand willing to lease those lands. The illustration, I hope, will make it clear that rights of occupancy, so far as *halhasila* lands are concerned, should only be permitted to accrue in respect of those lands actually cultivated by the tenant, and that a relinquishment of a portion of the lands previously cultivated will destroy the right of occupancy in respect of the lands so relinquished.

50. In concluding this report I have only to add, that I have confined my remarks to such portions of the Bill where I considered my practical experience might possibly afford some assistance to the framers of the measure. I do not, however, desire to have it understood that my suggestions arise out of, or are meant to, apply beyond the local necessities of the districts in which I have passed a larger portion of my official life. I am aware that careful revision of this somewhat bulky report would enable me to exclude some unnecessary repetitions, and present my remarks in a more concise form. Time, however, being short, I have been in a measure compelled by press of work and other reasons to send in the report exactly in the shape in which I originally drafted it. One of the most prominent features discernible in the policy which has directed the constitution of the present Bill is, in my opinion, an undue desire to lay down rules generally applicable to every part of the province. This determination has, however, been found to be impracticable, with the result that, in the attempt made to persevere in the original intention, tenancies in themselves most important, but subject to local customs, opposed as a rule to the ordinary incidents of ryoti land, have been unfairly excluded from the operation of the law. The justice of this remark is conclusively shown, I think, in the manner in which the right of *dearah* and *halhasilah* tenants have been practically ignored by the framers of the present Bill, rights it should not be forgotten inherently valuable to an important and widely ranging class of tenants, but peculiarly susceptible to the exaction of zemindar and planter, and therefore the more worthy of the protecting vigilance of the Legislature.

HERBERT R. REILY.

CHANCHAL ESTATE,
District Maldah.

APPENDIX A.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Number of Pergunnahs.	Total number of mouzahs.	Holdings of more than 100 bigahs.			Holdings of more than 50 but less than 100 bigahs.			Holdings of more than 20 but less than 50 bigahs.			Holdings of more than 5 but less than 20 bigahs.			Holdings not exceeding 5 bigahs.			Total number of tenants, (*vide* cols. 3, 6, 9, 12, 15).	Total area of land, (*vide* cols. 4, 7, 10, 13, 16).	Total rental, (*vide* cols. 5, 8, 11, 14, 17).
		Number of tenants.	Area of land.	Amount of rental.	Number of tenants.	Area of land.	Amount of rental.	Number of tenants.	Area of land.	Amount of rental.	Number of tenants.	Area of land.	Amount of rental.	Number of tenants.	Area of land.	Amount of rental.			
Kátendáh ...	214	13	1,919	1,691	145	8,951	6,907	1,070	29,611	28,874	6,159	65,817	42,681	5,785	23,405	20,521	13,172	1,29,703	1,06,674
Gaurhand ...	51	4	1,295	1,481	9	683	398	122	3,963	2,901	1,654	18,692	9,789	1,796	6,589	4,386	3,585	31,222	18,935
Rokenpore ...	134	11	3,033	1,475	27	2,475	1,396	308	10,735	5,426	2,790	29,458	15,668	9,442	27,311	17,230	12,578	73,012	41,194
Total ...	399	28	6,247	4,647	181	12,109	8,701	1,500	44,309	37,201	10,603	1,13,967	74,138	17,023	57,305	42,137	29,335	2,33,937	1,66,824

It will be seen from the statement given above that out of the total number 29,335 tenants, 17,023, or 58 per cent. hold less than 5 bigahs of land.

The 6th August 1884.

HERBERT R. REILY.

H. W.—Reg. No. 5537C—327—18-8-84.

Dated Camp Moorligunge, the 13th July 1884.

From—Rajah Hurbullub Narayan Sinha, Bahadur, of Sonbursa,

To—The Private Secretary to the Lieutenant-Governor of Bengal.

I beg most respectfully to submit my memorandum regarding the Bengal Tenancy Bill, as revised by the Select Committee, for the information and kind consideration of His Honor the Lieutenant Governor of Bengal.

MEMORANDUM BY THE RAJAH BAHADUR OF SONBURSA REGARDING THE BENGAL TENANCY BILL.

I have carefully read the Tenancy Bill and the report thereon, as settled by the Select Committee, which were submitted by them to the Government of India on the 14th March last. I dissent from the provisions of this Bill, on the simple ground that the present Bill, far from being like the former one, is harder than it was.

The object of the Tenancy Bill is twofold: first, to improve the status of and to define more clearly the rights of the ryots; and secondly, to improve the procedure for the collection of rents by the zemindars.

As regards the first, no necessity nor emergency has been shown, nor any political occasion has occurred, which would justify the changing of the present law (which has been in force since a number of years, alike liked by the zemindars and ryots, and by which the rights of the latter have been maintained), and enacting in its stead a law which is nearly like the Irish law (though the circumstances which necessitated its enactment do not exist here) for the helpless, loyal and empty-handed zemindars, who are not so trained up as the Irishmen are. In this Bill the rights of the ryots have been considered without the least attention being paid to those of the zemindars. It has been provided that nothing can be done by the zemindars mutually with the ryots regarding the settlement and collection of rent, except through the courts. Thus the rights vested in them by Regulation I of 1793 have been upset, and the status of the zemindar and the ryots, as settled under Regulation VIII of 1793, has been altogether nullified.

In Regulation I of 1793, it is distinctly stated that the zemindar, with whom the settlement has been made, shall enjoy exclusively the profits of the land and pay revenue for it to Government.

Regulation VIII of 1793 was passed to explain more clearly Reglulation 1 of 1793, by which the status of the zemindar, dependent talookdar, jagirdar, khodkhast ryot, &c., has been fixed.

It has been said that this Bill may be made the law of the land in order to protect the ryots from the oppressions of the zemindars. Are not the rights of the zemindars mixed up with those of the ryot? The right itself has originated from prescription, and this is alike acknowledged by all the nations in the world having religion or without any religion. In that part of the Bill where the rights of the ryots are considered, these have been recognized on account of their lengthened existence, since hundreds of years have not been so acknowledged. Granting even that the rights of the ryots have been in existence since a long time, yet those of the zemindars must have existed before the formation of the rights of the former.

There are many zemindars in Behar who trace their descent from about the Hindu Raj, and in such families there exist sunnuds granted by Mussulman Emperors. In my own family there is a firman granted by Emperor Arungzebe, in which occur the following words:—"That through the former sunnuds the rajgee and zemindari of the place are vested in Raja Kissen Singh's family," as stated in my note regarding the last Tenancy Bill. A copy of the sunnud in full, with translation, is annexed to this memorandum. Raja Kissen Singh was my ninth ancestor; why then have the rights of the ryots only been preferentially considered? Certainly both the zemindar and the ryot's rights should have been equally considered in the Bill under notice.

It is said that custom, which is inconsistent with the Bill, is not to be recognized. Has the law no concern with custom? Is it to be simply the repository of orders? Can there be any law for the alteration of customs in force in any country? The Bill under notice has been framed in an extraordinary way. So far as regards the rights of the ryots, custom has been retained, and not so done as regards the rights of the zemindars.

It is a matter of regret that nothing has been said clearly regarding waste lands. Were not those lands settled at the time of the Decennial Settlement with the zemindars? It is said in the Bill that, if the zemindars fail to prove the other lands to be theirs, these will not be theirs. This appears to be very strange. What better proofs zemindars can give regarding them than the papers showing the quantity of jote lands of the ryots, and pointing out such cultivated lands of the ryot; and any lands which are other than these are to be called waste lands of the zemindar. Can it not be said by inspection which lands are waste? As said by Raja Siva Pershad in his speech regarding the subject in the Legislative Council, what is deposited in the Bank may be doled out to any number of men. I say by the above process something is given to a man's share, whereas by the procedure under comment complete destruction of the zemindar's right takes place. Even the malik of the land will not be able to get it after much fighting and litigation under the proposed law.

I do not understand why the law of contract, which is held to be proper, equitable and customary, has been partly maintained and partly abolished regarding the same man. In my opinion the rules regarding contract may remain in force, which may bring in amicable settlement of tenantry questions between the zemindar and the ryots, thus doing away, with unnecessary lawsuits and waste of time, and allowing them to pursue each other's work

honestly. If this is abolished, the complicated procedure prescribed by the proposed law will increase suits, and consequently both the zemindar and ryot will be ruined. Government abolishes contract on account of the lawlessness of the zemindars, *i.e.*, that the kabuliats are so worded that the occupancy rights are destroyed. Is it possible that a zemindar can take kabuliats by force from thousands of ryots and get them registered? Why did the ryots pay rent as fixed therein without objection? Why did they not sue the zemindars, and why did they keep quiet? Unless settled amicably and mutually, no kabuliats can be executed and registered.

At present the feelings of the zemindars are against the Bill, and so much injury is being done to the zemindar's work since the introduction of the Tenancy Bill, that if the zemindar wants to sell any portion of his estate he cannot get purchasers for the same

The subject of the Rent law has been before Government since the last 10 years. Good many reports on it have been sent to Government by many officers of Government and outsiders; nevertheless it appears from the Government letter that sufficient information has not been placed before it. I think it quite impossible to have the matter settled through reports. Under these circumstances, and without any parties asking for a law, a new law is to be passed, which has the object of kindling the fire of dispute between the zemindars and ryots to benefit the mahajan, the middle class ryot and vakil, and not the *asul* ryot and the zemindar. My own opinion, as well as that of all the Behar zemindars under the circumstances, is that there is no necessity for a new law, and the law now in force may be allowed to stand if the Government think it proper to make a new law. I would respectfully suggest that in each zilla of Bengal and Behar a Commission be appointed, consisting of half zemindars and the other half officers of Government, to make enquiries and to take depositions of zemindars, and then to submit a report to Government together with the original depositions. Government will then be in possession of full details on the subject. Thus every man's right will be settled, and injury will be done to none.

At the request of the Select Committee the Government has called for information on the following points:—

2. *Firstly*, whether, with reference to landlords' improvements, it is desirable to empower revenue officers to arrange for the cutting of irrigation channels, &c., and the payment of compensation.

3. *Secondly*, whether the summary Sale law for the putni tenure can be made applicable in cases of talooks.

4. *Thirdly*, whether the same procedure can be applied in cases of recovery of arrears of Road cess and Public Works cess of lakhraj tenures.

5. *Fourthly*, about the bastu or basdee lands.

6. *Fifthly*, about utbundee and hal hasilee tenure.

7. *Sixthly*, about the exemption of garu and guzasta holdings from pre-emption clauses.

8. *Seventhly*, about the improvement of price-lists for the last 12 years, and the effect of the enhancement to be based thereon.

9. About the first point, I beg to say that in cases where the zemindar constructs a canal, arranges for the storage of water and for the opening up or damming up the courses of water, giving powers to revenue officers would be tantamount to interfering with the profits of such person, and in this there will simply be wasting of time of the Government officers? The zemindar and the ryot will thereby be ruined, and there will be another evil, which is this, that the persons who used do these works in consideration of the profit arising therefrom, will, on account of the untimely deputation of officers and the expensive procedure, be discouraged from undertaking such kind of work; but if the zemindar wants to construct similar works by borrowing money under the Land Improvement Act, in that case it would be proper to give so much authority to revenue officers as to see that the work for which the money was advanced has been done.

10. Second point. In the Behar portion of this division, there exists no talookdari system.

11. Third point. If the lakhraj tenures are summarily sold on account of the arrears of Road cess and Public Works cess, under the Putni law it would not only defeat the purpose for which this kind of tenure was created, but at the same time interfere with the proper discharge of the functions attached to such tenure At present a lakhrajdar is faithful, and in consideration of service is subordinate to the zemindar. The proposed procedure, instead of simplifying matters, would give rise to another powerful class between the zemindar and ryot for the subversion of the zemindari right.

12. Fourth point. About the homestead lands.

It appears that in consequence of different customs in different parts of the country, the Select Committee have done away with the chapter regarding it from the present Bill. I am to say that in certain places rent is taken for such lands, and in some places the zemindar assigns a particular spot for the purpose, and it rests with the zemindar either to take rent or not, and therefore section 216 would not be sufficient. A chapter giving the detailed provisions regarding the same should be inserted in the Bill, as the taking of rent or not rests upon the will of the zemindar. It would be necessary, in case of dispute for the recovery of rent, for the non-paying ryot, if not settled amicably, to have recourse to the courts. The court shall allow rent to be taken according to the local custom. It would not be proper to give occupancy right to the ryot who does not pay rent, and if any ryot's right in any jote becomes extinct, it would not be proper to allow him occupancy right in his bastu lands. If in these cases occupancy right be allowed, it would make the ryot a sharer of the zemindar.

13. Fifth point. Utbundee and hal hasilee tenures. I do not understand which tenure is called utbundee, and this is not clear from the Government letter. I believe hal hasilee is that kind of land which has come out of the water and accreted to the jote of the ryot. Additional rent is taken for it as if from a new ryot, and in it that ryot has no right so as to prevent its being settled with him or some other ryot. I do not know whether I am right. I do not consider it proper to write anything more regarding it.

14. Sixth point. About guzasta or garu jotes. It is said that these jotes ought to be exempted from the pre-emption clause. Why in these cases right of pre-emption is not to be allowed if it is at all allowed The pre-emption clause has come from the Mahomedan law, and in that law no exception has been made regarding any kind of right. It is held to be good with reference to any person with whom there is any concern, and therefore it is necessary that Huq suffa should hold good with reference to these jotes.

15. Seventh point. With reference to the price-lists for the last 12 years, I beg to say that these have been prepared through uninfluential and irresponsible men, and this is a guess-work: what trust can be put upon them. The price of grains is not now the same as it was five years ago, and if in first six months the price is Rs. 2 per maund, in another six months it is one rupee. Under such circumstances, if there be enhancement and decrease of rent, it would simply cause the waste of time and money of zemindars and ryots, bringing no good. I do not find any procedure for the correctness of such lists. If a zemindar, in order to enhance, says that so and so crops is Rs. 5 per maund, the ryot would say Rs. 2 per maund, and the court would be required to send officers to enquire and settle the point; their reports would contradict each other, as the value of crops is ever changeable.

16. As regards paragraph 4 of the letter of Government of India, this will be settled by the Revenue officers, but thus far I say that, in consequence of heavy work, it is proposed to make over a portion of it to some other agency under the Local Self-Government Act. The rent work, which would concern nearly the greater portion of the people of the district, would increase labour, necessitate additional establishments of amlas and officers and the consequent expenses.

CHAPTER III.

Tenure-holders.

17. There are four persons as tenure-holders: first, talookdars whose tenure was in existence before, and in whose possession there is a mouzah or talook having a fixed boundary; second, the putnidars who were in existence before, and for whom there is a separate law; third, the person who had before in his jote more than 100 bighas, or a person who will, after the passing of this Act, anyhow make his holding contain more than 100 bighas, and for half and more than half of his land a sub-ryot has been settled; and fourth, a ryot having rights of occupancy, who has let more than half of his jote, and whose jote being registered, becomes a tenure-holder.

18. 1*st*. *Talookdars*.—In the Behar portion of this division, there occurs no talook, but those persons are talookdars who have a talook, and who hold mouzahs of which the boundary is fixed.

19. 2*nd*. *Putnidar's tenure*.—There is a separate law for it, and this has been incorporated into this Bill; but as several conflicting interests have been established by this law, and the rulings remodelling them in the present form would unsettle them, it would be better to keep it separate, as said by others.

20. *Tenure-holders who hold more than* 100 *bighas of land and who let on lands shikmee* — In Behar there are very few tenure-holders of this class, and these have been included into the category of the several classes of ryots. The zemindar is put to no trouble on this account, but, except in Rungpore and Burrisal in Bengal, there are very few of these in other parts of the country. If any tenure-holder is created in Behar under the new procedure, the right of the zemindar will be injured. The privilege of the zemindar being snatched from him is given to the ryot. A person who used to do the work of cultivation himself thus learns a lesson to become, by sub-letting without any reason his lands, a talookdar, to procure leisure hours to fight out cases with the zemindar, to bring in enhancement cases against the sub-tenants, and to realize abwabs. Ere this, the Government of Bengal maintained that on mustagery pottah the zemindar should not let lands to any: its policy now is changed by the creation of this tenure-holder. The formation of the middle class ryots would cause great oppression to the under-tenants. According to the new law all the ryots would be made tenure-holders, and as these would increase, so the rents of the under-tenants would increase, notwithstanding the restrictions. The petty landholders have been blamed for taking abwabs, and when the tenure-holders will be multiplied, they will oppress more the ryots under them. The ryot who used to cultivate the lands himself, cannot hope to find his lands improved under the Sub-tenantism. Besides, the attention of the agriculturist will be diverted from the work of cultivation. Certainly, thinking of his superior rights allowed by this complicated law, the ryot would bring suits for the same which would ruin him (notwithstanding his imagined status and right). There would be another mischief, which is this, that on the creation of the tenure-holders, every one can easily increase his jotes, for no one has a jote of defined boundary, but has certain plots which have

separate boundaries. Why then his jote, which has less than 100 bighas, cannot be increased by additions from adjoining waste lands in which he had no right? And in cases of alluvial formations he can do the same, and there are other ways in which he (the ryot) can get additional lands for his jote which has less than 100 bighas and declare himself a tenure-holder. I do not understand why so much right is to be given to the jotedar of 100 bighas, whether he has occupancy right or not, which has not been stated clearly. This is in contravention to the former and the present laws.

TENURE-HOLDERS UNDER SECTION 37.

I do not understand why a ryot, who lets more than half of his jote, would become after registry a tenure-holder. It is a matter of regret that, as regards every class of ryots, Sub-tenantism is allowed. The mischief which would arise from such a proceeding has already been stated. According to chapter II the court shall have regard to three things, and one of which is custom, and that for the benefit of the ryot, but such rights have been put in of which there is no custom; and with reference to occupancy right, it is said in clause 3, section 26, that until the contrary is shewn, the ryot shall have occupancy right; and if section 37 is put in force, then any ryot, who has occupancy right in a bigha, if he lets more than half in shikmee, becomes a tenure-holder under this section. Thus the two classes of ryots, that is occupancy and meadee ryots, will be one and the same. I am against such a proposal. Such right should not be given except in the cases of talookdars (who were in existence before) and putnidars, otherwise the interests of the actual cultivators and zemindars would suffer.

CHAPTER IV.

RYOTS HOLDING AT FIXED RATES.

22. In section 23 of chapter IV, it is stated that the ryots holding at fixed rates shall have the same privileges as the tenure-holders, and if they act contrary to the contract consistent with the Act, they will be ejected. It has been enunciated in clause 11, section 64, that if in any suit instituted under this Act, it is proved that a ryot has been paying at an uniform rate of rent for 20 years before the institution of the suit, it is to be presumed therefrom that he has been doing so since the Permanent Settlement, unless the contrary is shown. I am to state that, before and after Act X of 1859 and Act VIII of 1869 so much right, which was to be established, has, under some way or other, already been so done; but to reproduce the same section in a modified form in the proposed Bill would certainly embolden the ryots to bring in fresh cases. The words that "unless it be proved that such rent was fixed at some later period" have been altogether omitted: this will injure the interests of the zemindars. It appears that the courts admit generally the statements of ryots as correct, and why would not the ryots make their rights permanent by so doing? As an instance, I say that in certain mouzahs certain zemindars being lenient to their tenants, allow them to hold lands at an uniform rate of rent through engagements made from time to time or without any engagements for 20 years. Would the effect of such leniency be that the rights of the ryots be permanent? I would suggest that the same law may remain as regards these cases as is now in force, which prevents taking advantage by fraud which the obscurely worded procedure in the proposed law gives by the omission noted above.

CHAPTER V.

OCCUPANCY RIGHTS.

23. Section 24 is regarding the continuance of existing occupancy rights of the ryots; section 25 is regarding settled ryots to have occupancy rights; and section 26 is regarding the definition of settled ryot.

24. As regards occupancy rights, I need say nothing more than this, that these rights have been generally recognized, and there is no difficulty in proving so by the ryots. If the ryots file receipts and acquittances as proofs of possession, the courts accept the same and these are with the ryots. If on the other hand the zemindari papers are filed, very little attention is paid to them by the courts. Generally, the zemindars do not dispossess the ryots unless they become troublesome. It is said in section 24 that, according to custom, right of occupancy is to be allowed to the ryot. By this any ryot can assert occupancy right who holds lands for a day, saying it to be a custom, and this will be taken as granted, for the onus of proving the contrary has been thrown on the zemindar; this is a great hardship. The onus ought to be upon the person who makes the assertion as provided in the English Law, and which is in force, and which has become the practice. It is said in section 25, clause 1, that every settled ryot shall have occupancy right in all lands. Certain pieces of waste land, before the passing of this Act, came under the possession of certain ryots: would it be proper for him to claim the right of occupancy in them? This will be hard for the zemindars. I object to the expression all lands, for this will lead to confusion. The words ought to be those lands for which rent is being paid for 12 years. As the section is now worded, all lands may include lands which he may have got from a large piece of waste land or other land. Besides, he may claim occupancy in basdee lands, for which he

has never paid rent. Without proper specification of lands, such section should not have been inserted; otherwise the interests of the zemindar would not suffer, causing at the same time trouble to the courts and inciting the ryots to fight out cases.

25. The Act mentioned in clause 2 of section 25 refers to Act VIII of 1869, or Act X of 1859, which has a 12 years' rule of occupancy, and to allow a reduction would be contrary to that law, and seriously interfere with the proceedings undertaken under it, and this law has been in force since 25 years. This is another instance of the injury to the rights of the zemindars.

26. The object of the occupancy clause is to benefit the actual settled ryot of a village; but the provisions of sections 25 and 26, as now framed, instead of benefitting this man, would be advantageous to the ryots who are temporarily settled in the village for the purposes of cultivation, or getting the work of cultivation done for them, or the mahajans who have obtained the lands in the village; these men shall have occupancy in the lands for which whether or not they give proofs of payment of rent, or whether or no they cultivate the lands.

27. *Clause* 3, *section* 26.—A person shall be deemed, for the purposes of this section, to have held land continuously in a village or estate, notwithstanding that the particular land held by him has been different at different times. In case of any ryot who holds lands in different villages, or in one village in a mehal in separate lots, obtained at different times one after another, why these are not to be taken as separate holdings on account of their being settled under different numbers. Again, that a piece of land has been taken possession of by a ryot before 12 years, and therefore occupancy right has been allowed to him: then why he shall have the same right in all the pieces of land in the village or estate which have been settled at different times for some term less than 12 years, or for one day before the passing of this Act, and at different places, and why these should be considered as one holding.

28. *Clause* 6, *section* 26.—It is said that a person shall continue to be a settled ryot of a village or estate as long as he holds any land as a ryot in that village or estate, and for one year thereafter. But it has not been stated under what circumstances this will be done. On seeing paragraph 14 of Select Committee's report, it appears that any time the ryot is put out of possession he will continue to retain his right after a year. The ryoti settlement is made for rent; if the ryot without making arrangement of rent abandons it, then from whom the zemindar shall take rent if his right is continued? The zemindar will not be able to settle the land, nor anybody would take it. If the ryot takes back his land, his objection to non-liability for rent on account of non-cultivation would be good. This will be injurious to the zemindar.

29. *Clause* 7, *section* 26.—It is said in section 96 that if a ryot abandons his jote, and recovers it after more than a year by suit, his right as settled ryot shall continue. If, according to the provisions of the law, he has abandoned the land and the zemindar settled it with some other person who has improved it, or kept it in the same state as it was before, and if in consideration of improvement or some other cause or enmity with the zemindar and the new ryot, he, the old ryot, recovers this land after suit, would such a proceeding be proper by which two persons shall be put to trouble? If occupancy right be allowed to such a man again, it would unsettle the zemindari affairs.

30. *Section* 27, *Village and Estate.*—It is said in clause (*a*), section 27, that a village means the area included in a revenue survey map having a fixed boundary. Where it is not procurable, the Local Government is to settle it by deputing officers, and in clause (*b*) it is stated that, where two or more estates have been created by one or two butwarrahs, the area of the parent estate shall be deemed to be a single estate notwithstanding the butwarrah.

31. It would be better to retain village in lieu of estate, for the village has a definite boundary and known to all, whereas the estate may mean a large pergunnah or a talooka of large extent.

32. *Section* 28.—It is said that, if the zemindar gets occupancy right of the ryot anyhow, it will be as regards mere contract, then it would be superfluous to give the zemindars the first right of bid in a sale or the right of pre-emption.

33. *Section* 31.—By clauses (*e*) and (*f*) of section 31, the ryots are empowered to surrender, or transfer and bequeath by will, his right of occupancy. With reference to this, if no provision is made in the law to take the consent of the zemindars, and freedom is allowed to the ryot, it would be injurious to the right of the zemindar, for the right of occupancy is in the land in which the zemindar has a malikana right, and therefore without the latter's consent no transactions of this kind need take place by which his work would be properly done and would put him to no trouble.

34. *Section* 32.—The object of giving the zemindar right of pre-emption is that this will save him the trouble which the free sale would entail upon him, *i.e.* the bad ryot, mischief-making mahajan and men of some other profession, or outsiders taking lands in a village would be injurious to his interests. I find no advantage to the zemindar if he purchases the occupancy right out of fear, and there will be other concomitant evils, namely out of every 100 zemindars, 95 are sunk in debt, and consequently they shall find difficulty in getting ready cash. Much more so in cases where 100 of the ryots unanimously ask the zemindars to buy the rights. The money thus spent would not fetch a profit, but generally loss. Again, under section 28 the zemindar does not get this right in full, and these disgusting proceedings will be before him over and over. If the ryot knows beforehand that certain land of his is likely to suffer on account of fluvial action and other causes, he with

others numbering hundreds fix upon a tenure purchaser, and thus put the zemindar to trouble, or the ryots find out under the cover of this clause of law some other way of profiting at the expense of the zemindar, or making his relative or friend as a Furzeb purchaser, reap himself the benefit of thus putting the zemindar to trouble. As I said over and over last year, the zemindar being the malik, why he shall take upon him the burden of the evil arising from the purchase of this kind.

35. *Sections* 37 *and* 38.—Restriction on sub-letting, as mentioned in sections 37 and 38, have already been commented upon in my remarks regarding chapter III. It appears to me that the shikmee would interfere with the right of the zemindar for distraining crops, notwithstanding the benefit of section 156. Shikmee pottahs under the circumstances stated in clause (*a*) may stand, but what advantage there is in creating such ryots who sub-let more than half their lands to tenure-holders. It is now the policy of Government to frame a stringent law for the few zemindars who have been stigmatised as oppressors. When the tenure-holders will be augmented in numbers, it will hereafter be troublesome task for the Legislature to enact great many laws for their lawlessness.

36. *Sections* 39 *to* 50.—Enhancement rules are stated in sections 39 to 50. Much restriction has been put in even as regard enhancement by private contract. It cannot be expected then to have enhancement by any other way specified in the law through courts. It may be feasible to have an increase of rent on account of improvement of land and increase of productive powers by fluvial action, and much injury will be done by the restrictions; as an instance, there is a piece of waste land settled with a ryot under two consecutive terms or under special circumstances at 4 annas per bigha. According to the enhancement rule, not more than 5 annas will be increased, though the land is worth more than Rs. 5 or Rs. 10, and the case of the adjoining lands being the same. The zemindar will be the loser by this rule. There is another point, viz. that in matters of enhancement, the custom of caste is to be regarded where it is in vogue. Though it is not mentioned in any law since 1793 in Bengal, Behar and Orissa, yet it may be expected that hereafter, in consideration of the high caste of the zemindars, it may be considered necessary to alter the same law as regards them, or the Encumbered Land Estates law may be put in force here.

37. *Section* 51. *Reduction of rent.*—About the reduction of rent provided in section 51, I am to state the suits on account of the lessening of the price of the food-crops in the bazar according to clause (*b*) would be increased.

38. *Section* 2.—About the preparation of the price-lists there will be more difficulty. It is said that, if within 15 days objection is raised to it by ryot or zemindar, then it will be considered It is known to all that unless there is a suit, nobody pays attention to this matter, and who cares taking notice of *ishtehar* given in this or that place, and who will bear in mind the fact, if objection is not made within 15 days, the list will be held to be correct; and according to law of evidence, if the published lists are accepted as evidence, and if objection is raised to their correctness, what sort of attesting evidence would be given; and if those lists have been prepared by an irresponsible amlah, then what trust can be put upon them, and these will therefore do good to no party.

39. *Section* 53.—Buttia system has been in force since a long time, and is sanctioned by nature, and there is much advantage from it; if any injury is done to the crops on account of dryness, inundation, destruction by insects, fall of hailstones, the ryot is free from trouble, especially in times of famine, on account of liability for rent, and it saves him from enhancement and from suits from other causes, supposing that advantage has been gained by the commutation in any time in any instance, but it is not akin to the advantage gained by the buttia or half and half system.

CHAPTER VI.

Ryots having no Occupancy right.

40. So much right has been given to the ryots of this class that, except on the grounds specified in section 58, they will not be ejected, but an important omission has been made in it, that is, where the ryots take lands under verbal contract, how they will be ejected on the expiration of the term of such verbal contract, or in case of enhancement after the expiration of such contract. This custom has been in force since a long time, why it has been omitted.

41. *Section* 59.—This section provides that, after the expiration of the term of a registered lease, it will be necessary to give the ryot a notice to quit the land six months before the expiration of the term of such lease, and the suit for ejectment shall be instituted after six months from the date of the expiration of such lease, otherwise the ryot will not be ejected. It is a matter of regret why any conditional terms were imposed upon the ryot.

42. *Section* 60.—Provides for ejectment of ryots for not giving enhancement of rent, and in which much favour and concession have been shown to the ryot, and why no real favour has been shown to the real malik in comparison to such ryots.

43. *Clause* 7, *section* 60.—Five years' term of lease would enable the ryot to get occupancy right, thereby falsifying his first contract, the ryot would take advantage at the expense of the malik. This is injurious to the zemindar.

CHAPTER VIII.

44. I have said regarding clause 2 of section 64 in connection with chapter IV I beg now to add here that in the Select Committee's report, it is stated that, when the proposed register of tenures has been prepared, this matter would be settled; but I strongly deprecate it, for it will open up the doors of litigation, which will ruin both, especially for the expenses of enquiry and for a decision.

45. *Clause* 4 *of section* 64.—I am to state that, if any ryot has land in a jote of this kind, and get other lands joined to it in which he has not the same permanency of rate, would it be, under such circumstances, supposed that such additional lands would be combining to their original state, or in other words permanent?

46. *Clause* (*b*) *of section* 73.—It is said that when a tenant bound to pay money on account of rent has reason to believe that, owing to dispute or ill-feeling, the person to whom his rent is payable will not be willing to receive it, and to grant him a receipt first, then he is to deposit the money in the court. This will induce the ryot under an imaginary reason whether the zemindar take the rent or not, to deposit it. It would be better to keep sections 46 and 47 of Act VIII of 1869 in force. This is not, nor will be injurious to any.

CHAPTER IX.

47. The definition of improvement, as given in section 87, and the right given regarding improvement to the ryots holding at fixed rates in section 88, and those given to the ryots having rights of occupancy in section 89, and to non-occupancy ryots in section 90, all these are against the custom of the country and nature, and this custom has been in force since thousands of years in all the countries, unlike the customs which are in force in one part and not so in other parts of the country; and allowing such a right against the maliks' consent under an imaginary reason, which has since been made, and does away with the ancient custom, it is a matter of surprise that compensation has been allowed under section 93, and the heads of compensation have been settled in section 94. These persons, who have not had rights to do this kind of work some hundreds of years without the malik's consent, it is now said are to get compensation when in case of ejectment. This stringent provision is against the rights and privileges of the zemindars and terms of the Decennial Settlement.

CHAPTER X.

RECORD OF RIGHTS AND SETTLEMENT OF RENTS.

48. It would not be proper to give authority to Local Government in this matter. There will be good deal of waste of time and money for the work of the survey, specification of rights, and settlement of rate of rent, and so many cases will occur as will require good deal of time for disposal. In support of this, I beg to cite the case of a butwarrah in which much time is spent, and generation after generation has been carrying on such a case. According to Act VIII of 1876, about the registry of the zemindars' rights, there were numbers of suits for the establishment of rights I need not enter here into details of its workings, which are known to all. Measurement papers and maps are to be found in the sheristas of many zemindars, and there are survey maps too which are like those prepared by Government officers, and before this Act the zemindars have filed twice papers in the Road Cess Office giving lands and jumma thereof, and there is no precedent about the objection of the ryots to them, and many zemindars have pottahs and kabuliats for the settlement of any dispute which may arise regarding the area, jumma, &c., and therefore the Local Government need not be invested with any powers in the matter.

CHAPTER XI.

TABLE OF RATES.

49. The provision made regarding the table of rates is impossible to be worked on, on the ground that the description of lands in one part of a village varies with that of the other. I say from my own experience that it is impossible to prepare one.

CHAPTER XII.

RECORD OF PROPRIETOR'S PRIVATE LANDS.

50. It is said that such lands as are known by the name of seer, zerait, nij, nij-jote, kamat, which have been cultivated by hired labourers and held continuously by a proprietor for 12 years, shall be his private lands. Are not the lands other than these zemindars' property, and for the non-acknowledgment or otherwise of these lands, except Regulation 1 of 1793, is there any other law. If it is summarily disposed of that the aforesaid lands are his private property, and other lands cannot be his without proofs, would the zemindar's claim be restricted to such lands only? Why proofs shall be necessary regarding them? There are remaining more or less than 100 bighas of waste land at a particular place, can there be any other bodie's right in them than that of the zemindar? It is a matter of surprise that waste lands will be the property of anybody

else if he asserts that he has a right in them, and the custom of a village is to be regarded on the point. If any land which has come to zemindar's possession as waste land at a time under 12 years, can anybody else have a right in it?

51. There are 5,000 acres of waste lands in a mouzah, and a ryot holds certain piece of land near it. He says these lands are his and they look waste According to the provisions of this Bill, the zemindar will be called upon for proofs to contradict the ryots. and the latter will not be called upon to show whether they have paid rents or not. If such a procedure is allowed, the papers for years regarding waste lands will be waste papers, and there are thousands and lakhs of bighas of lands Burraree, *i.e.* alluvial formation on the banks of rivers in which without ploughing crops are grown. Anybody who has right of occupancy or mukarraree near it, if he, before this Act comes into force, scatters seeds, then the lands will be his, and the zemindar called upon to prove whether these lands are his or anybody else's bhoolee or otherwise. If feraree lands or lands under ejectment clauses come under his possession as his kumut for certain term of years, if the zemindar fails to give proof of 12 years' possession, would such feraree or ejected ryots be the maliks of such lands? This shows interference with Regulation I of 1793.

CHAPTER XIII.

Distraint.

52. I would state that the authority to distrain (which was simpler), hitherto vested in the zemindars, has been entirely taken from them, and now distraint should be made through the courts. Mere application would not do for getting distraint made; if the court thinks proper distraint can take place. There will be delay and expense. By the time the application is made, the crops will be *nil*, especially in jungly land, where the ryots remain for the harvest time, or the jote has been taken for a year, or settled with a stranger or a ryot, who has his land, and who has no other property than this. In these cases, without authority of distraint, it is impossible to collect rent. When penal clauses for damages have been allowed, then why the authority from the zemindars shall be withdrawn? A zemindar who is rich and influential will be able to give damages in cases of unlawful distraint. Under Chowkidari Act, a tehsildar who is poor has the power of distraint in cases of ryots and also of zemindars. This man, though illiterate and poor, is trusted, and the educated and loyal zemindar, who is liberal handed on public occasions, would like to take blame for dishonestly acting. In such trivial matters, why Government does not trust such classes of men, and why authority shall be withdrawn?

CHAPTER XV.

Sale.

53. The procedure for sale, provided for in this Act, in execution of decree for arrears of rent, is contrary to former Act, and much discussion has occurred regarding it. I said on the point in detail in my note of the past year, and therefore I need add nothing more than this, that the procedure for sale has been based on the ground that the ryot takes the benefit by receiving surplus sale proceeds; but it will be impossible for the ryot to get them easily on account of the proceedings of the court, and these surplus proceeds will be absorbed in the share of the mooktears. The zemindar, too, would not find the procedure of ejectment under the present law to be simpler.

CHAPTER XVII.

Contract and Custom.

54. By section 210, in certain exceptional cases, contract has been made void. This is against the principles of freedom of contract. Such a strong, well-grounded, religious, legal and customary practice has been in force since and before the beginning of the British Raj, and it was under section 57 of Regulation VIII of 1793 that the practice of granting pottahs, *i.e.* contracts, has been made the law of the land, and this practice has been supported by law since hundred years, and by religion since ancient times, and there are other enactments on the point Thousands of sale proceedings have been effected and crores of pottahs and kabuliats have been executed and registered under it. Now this freedom of contract has been done away with, but the ryot has been allowed to contract regarding property, moveable and immoveable, with mahajan, and as regards the zemindars, it has been provided for him that, excepting the restricted cases, he, the ryot, can enter into contracts Any ryot who abandons his jote or resigns it is allowed freedom in this; no restriction is placed on it. Freedom of contract is the natural right of all.

55. Under the Emigration Act a man has freedom as regards himself, though this is against the will of his friends, and his position under it is like that of a slave. This is allowed; but no freedom is allowed in zemindari transactions, which will bring loss only in all bargains of profit and loss. Written contracts settle the affairs between the two parties, cause less suits, and simplify the proceedings of the court.

The restrictions in matters of contract have been made on the understanding that the ryots suffer much at the hands of zemindars of which no proof has been given. Against this I show in margin that by the contract rules enforced by me, the ryots have been benefitted. The name of the mouzah is Hurressurpur Dighee, the area of which is bighas 1,184-7-15, and the jumma Rs. 918-14-6. This mouzah is in tolooka Pakulpoora, towji No. 675, of which the area according to survey is 15,386 acres 2 roods 17 poles, out of which the cultivated area amounts to 14,199 acres 7 roods 19 poles. In the above talooka and mouzah, except tanks, roads, bustees, there are no uncultivated lands. The total mofussil rental of this talooka is Rs. 17,985-11-6. Paddy, rubbee and the ordinary crops are grown on it; on an average each bigha yields 20 maunds of grains; the rate of jumma is very low. If the mofussil rental of the whole talooka is calculated upon its entire area, the result would be Rs. 1-4 per bigha, and in Hurressurpur Dighee, under the same calculation, the rate per bigha would be annas 12-3; in this talooka no one has rights of occupancy or mokurrareo right; the registered pottahs and kabuliats have been from time to time executed after the expiration of the terms of the pottahs on the same jumma.

Number.	Number of towji.	Name of Mehal	Where according to survey.	Area for which rent is paid per local bigha.	Rent	Rate per bigha.
					Rs A P.	Rs A P.
1	675	Hurres surpur Dighee	1,321 3 4	1,184 7 15	918 14 6	0 12 3
2	675	Talooka Pakulpoora	15,386 2 17	14,199 7 19	17,985 11 6	1 4 0

56. From the above, it will be seen that no increase of rent has been taken after the expiration of the term of pottahs and the same jumma continued, and fresh pottahs given to them. I am prepared to show thousands of precedents on the point and these are documentary, and lakhs of such precedents can be shown by other zemindars. Under the above circumstances, I strongly advocate for the retention of the system of freedom of contract, and I am sure there would be no disadvantage by its retention. I am against this chapter.

FIRMAN.

BE it known to the Hakim (officers) high in dignity and rank: Amarlan (Revenue officers) Kurpurdauzes of pergunnah Nusingpur in Sircar Tirhoot, Sooba Behar, who have been exalted under the kind patronage of the Emperor, that the agent of Raja Kissen Singh memorialized to the effect that through former sunnuds obtained from the throne of this city that the zemindari and rajgee of the pergunnah in question are vested in Kissen Singh, that for some time the zemindars of the neighbourhood have been interfering with his rights, and that therefore an order which is elevated and high as the sky is hereby passed to the effect that the zemindari and rajgee thereof are hereby vested in Kissen Singh who is the best of his family and in his heirs; that the jagirdars and the revenue collectors of the present and past period try their best to keep this order, which is high, pure and exalted, in force invariably for ever that they do acknowledge the aforesaid person and his heirs as Rajas, and in no way do not make changes in their rajgee institutions, and on no account make any opposition to them. That the Raja do remain in enjoyment of the raj and for ever bless for the prosperity of the throne and call for no further firman and nothing shall be contrary to what has been written herein. Dated 10th Ciban month of Ilahi in the third year of the reign.

H. M. S.

C. E. G.—Reg. No. 4403C—313—28-7-84.

Dated the 16th September 1884.

From—W. B. HUDSON, Esq., General Secretary to the Behar Indigo Planters' Association,

To—The Secretary to the Government of Bengal, Revenue Department.

I HAVE the honour to forward herewith, for submission to His Honor the Lieutenant-Governor, copies of proceedings of our Association at two meetings held at Mozufferpore on the 26th of July and 16th of August respectively, the one called to discuss the transferability of occupancy rights, the other the rayat's rights to sublet his holding, and the restriction placed on such right in the Bill.

2. I have no doubt His Honor is already aware of the great importance the members of the Association attach to those portions of the Bill which treat of these two subjects, and also of the opinion we hold that it is only by a just and fair treatment of the portions of the Bill referring to transfer and subletting that we, in common with all traders, can ever hope to be in a position to treat with the cultivators of the soil on fair and equal terms. To us as a class they are of paramount importance. The foundations of all trade are security and credit—the one dependent on the other. Any attempt to lower the ryot's credit by depreciating the value of the security he should be in a position to offer, any attempt to make the security he could otherwise offer dependent on the good-will of others, must, from the very nature of any business, make it impossible for the ryot to meet us on advantageous terms and compel us to propitiate the landlord before entering into any arrangement with the tenants.

3. Relying on the views repeatedly expressed by the members of the Government on the subject, we have presumed that the principle of embodying transferability and the right to sublet amongst the incidents attached to an occupancy holding has been definitely decided upon, and that it was no longer open to discussion. We have to a certain extent followed the suggestions made to Commissioners of Divisions in your letter of the 24th of May last, and confined our discussion mainly to the restrictions placed on them in the Bill, and such other restrictions as we thought might be submitted with a view to attain the object we understand His Honor desires, that is, to prevent the land falling into the hands of persons who would purchase it with the sole object of making a profit by rack-renting.

4. We deem it, therefore, unnecessary to defend, by any elaborate arguments, the general principle of transferability of occupancy holdings, or the necessity for making provision for such in the Bill; but should His Honor, after receiving the additional information called for in your letter of the 24th of May, or when, as indicated in your letter, the provisions of the Bill "have been tested in the light of local experience and existing facts," deem it necessary to recommend a modification of the "principles" of the Bill, we trust His Honor will allow us, who are more interested in this subject than the landlords, and equally as much as the ryots, an opportunity of again submitting our views on it.

BEHAR INDIGO PLANTERS' ASSOCIATION.

Proceedings at a General Committee Meeting held at the Planters' Club, Mozufferpore, on Saturday the 26th of July 1884.

PRESENT :—

The Hon'ble T. M. Gibbon, C. I. E.
Dr. J. H. G. Hill, of Turkaulia — Concern.
Mr. E. Macnaghten, of Begumserai — „
„ W. O. MacGregor, of Aroa — „
„ W. B. Hudson, General Secretary

The above members met at the appointed hour, 8 A.M. After having waited till 9 o'clock, and a quorum of General Committee members not having been formed, it was proposed—

That the meeting be made a general one for discussion of the notified points of the Tenancy Bill (carried).

The following then formed the meeting :—

The Hon'ble T. M. Gibbon, C. I. E.

Dr. J H. G. Hill.	Mr. A. MacRae.
Mr. E. Macnaghten.	„ M. Mackenzie.
„ T J. Fraser.	„ A. H. Rennie.
„ W. O MacGregor.	„ R. Hudson.
„ H. Collingridge.	„ W. B. Hudson.

Read—Letters from General Committee members apologizing for non-attendance.

BUSINESS.—1. Transfer. Sections, 3, 10, 11, 23, 28, 31F, 31H, 77, 97.
2. Registration. Sections 15 to 22 inclusive.
3. Pre-emption. Sections 32 to 36 inclusive.
4. Incumbrances. Sections 175 to 192.
5. Contract. Section 210.

MR. GIBBON'S NOTE.

Section 3 (10).—Transfer covers mortgage.

Not only usufructuary mortgage—mortgage with possession, foreclosure on mortgage, but also a "lien."

It is difficult to draw the line between an usufructuary mortgage, a zarpeshgi mortgage, and a transfer in the wide sense of the word.

If transfer did not cover mortgage, the effect *might* be to prevent the rayat raising money on a mortgage or simple lien. The fear is that the landlord may, by exercising the right to pre-empt given him under the Bill, interfere with legitimate trade.

I myself think the pre-emption clauses have been so framed that the landlord can only pre-empt on a foreclosure and on voluntary transfer.

It should be remembered that the Calcutta Rent Law Commission wished to allow transferability, but to prohibit mortgage; also sale by a decree of court other than a sale under a decree for arrears of rent.

P. 17, para. 32, and also their Bill.

Transfer of permanent tenures such as (istamrari, mokarreri tenures, &c.,) occupancy holdings at fixed rates of rent, and tenures by reason of the rayat having sublet more than half his holding under section 37, are subject to one law: the transfer of ordinary occupancy holdings are made subject to another. The first are made subject to the provisions of the Chapter on Registration: the second to pre-emption on the part of the landlord.

Sections 11, 23, 37, 15 to 22 inclusive.

Section 31, subject to 32-36.

Section 16.—When a permanent tenure or a holding at fixed rates is to be sold up under a decree of court for a debt other than a decree for an arrear of rent, the court will serve notice of transfer on the landlord.

Section 33 —A landlord cannot pre-empt after sale under a decree of a competent court, but the bid of a landlord and a bid of a third party being the same, the landlord's bid will receive the preference.

Section 18.—Until a transfer is registered by the landlord, the transferor and transferee are jointly liable to the landlord for the rents of the tenure.

Section 19.—When the tenure is sold up at the instance of the landlord, the landlord is bound to register without any fee.

Section 19 (1).—Landlords refusing to register can be compelled to register under an order of court [section 22 (2)], and may be fined for refusing, unless [section 19 (2)] they can show sufficient cause for doing so.

My objection to the above is that section 23 should be confined to actual mokarreri tenures or holdings that have been declared by a competent court to be held at fixed rates; if

this is not done, every person who wishes to evade the provisions of the pre-emption clauses will plead protection under section 23.

Every landlord who would not otherwise wish to pre-empt may be obliged to exercise his right in order to set aside a claim to hold at fixed rates for ever after.

The landlord will be obliged to contest the claim for fear any "laches" on his part may enable the transferee to acquire rights he otherwise would not possess.

Every ryot who is sold up under decree of court for arrears of rent may contest the legality of the sale by declaring it incorrectly described under 178 and 179 (the sale sections having also been made applicable to holdings at fixed rates under section 182). It is to our interest to lessen litigation, not to encourage it.

Section 32.—The transfer of an ordinary occupancy holding is placed under restriction, it is made subject to pre-emption on the part of the landlord.

Section 32 (2).—To enable the landlord to come to a decision as to whether he will exercise his right or not, the would-be transferor must give the landlord intimation six weeks in advance of his intention to sell with all particulars of sale in order to permit of his valuing the holding, &c.

Section 32 (4).

I presume that the landlord would, if he pre-empted without the assistance of the court under section 32 (4), have to take his chance of any claims on the property being made after transfer, and of which the rayat had failed to inform him previous to sale. If the landlord claims the land at a valuation placed upon it by the court, the rayat may elect to retain the land and not sell.

If the rayat does conform to the law and sells without allowing the landlord the option of taking, the sale is void as against the landlord.

What the effect of this would be I do not quite realize; a lawyer must decide. I believe it would allow him to pre-empt at his convenience, or he might, after a certain time, more particularly if the transferor left the estate or ceased to reside on it, treat the holding as abandoned. Although the Bill does not and cannot provide for the would-be purchaser, seeing that the intention to transfer is properly notified to the landlord, intending purchasers would act wisely in seeing such notices served, or they may find the land in possession of others and themselves minus their money.

Section 36—Allows a proprietor who collects his rents direct from his rayats without the aid of middlemen to pre-empt. It allows permanent tenure-holders who collect from their rayats to pre-empt. It allows middlemen who hold the written sanction of their proprietors to pre-empt.

But it does not allow thikadars or ijaradars to pre-empt without the written consent of the proprietor, and it does not allow the proprietor to pre-empt where his ijaradar refuses to act for him.

Section 97.

Sections 11-23-31 F.—All holdings, whether permanent tenures, holdings at fixed rates or ordinary occupancy holdings, may be transferred in the same manner, and to the same extent, as other immoveable property, but nothing in the Act will entitle a tenant, whose holding is transferable, to transfer or bequeath without the consent of his landlord a portion only of the holding, so that it may be held by the transferee as a separate holding.

The landlord's interests are in so much protected that he may, if his rents fall into arrears, sell up the whole holding and decline to divide it. He may also, if he likes, take a *salami* and allow the portion sold to be held as a separate holding, but there is nothing to prevent a rayat mortgaging first one field and then another, and registering each such mortgage as an incumbrance under 177 and following sections, or selling his lands piecemeal. Each such act would be legal as against the transferor, and against any third party wishing to purchase or lend money on the whole holding, and such would to a certain extent in some instances hold good as against the landlord in his capacity of transferee.

Section 31 (*h*).—In case the tenant dies intestate, the property would descend to his heir in the same way as other immoveable property. Although the Bill does not make direct mention of it, I presume the land might be divided among the heirs.

Incumbrances.

Sections 175 *to* 192.—When discussing transferability, we must not lose sight of the very important chapter on sale for arrears under decree, and the extent to which our interests will be affected by its provisions.

Section 176.

All interest in land is in this chapter (section 75) divided into three classes, viz.—"Protected interests," "Registered and notified incumbrances," and "Voidable incumbrances." "Protected interests" go with the land, whoever the purchaser may be. It means shortly that, be the title what it may on which the defaulter holds his land from his landlord, the fact of the holding being sold for arrears of rent shall not set aside the title: the purchaser shall hold the land under the same title, and with the same rights the defaulter held it on.

Section 177 (*a*).—Incumbrance means any lien, sub-tenancy, easement, or any other right or interest created by the tenant on his holding, or in limitation of his own interest therein, and not being a protected interest as defined in section 176.

Sections 177 (B), 192 and 193.

A registered and notified incumbrance means an incumbrance created by an instrument registered under the Indian Registration Act of 1877, and of which a copy has not less than 3 months before the accrual of the arrear been served on the landlord in the manner provided.

Sections 179 (*a*) & 180.—All permanent tenures, all holdings at fixed rates of rent (section 182), must first be sold for arrears of rent subject to their registered and notified incumbrances.

Section 181.—If the price offered is not sufficient to cover the arrears, the landlord may elect to hold a re-sale of the tenure with power to void all incumbrances.

An incumbrance not registered and notified is voidable. All transfers of tenures after the passing of the Act must be registered under Chapter III of the Bill.

Section 177 (*b*).—All incumbrances already registered before passing of the Act may be notified 3 months before arrear becomes due.

Sections 192 & 193.—All incumbrances created, but not registered, may, provided their registration is not compulsory under section 17 of the Registration Act, be registered and notified within one year from the passing of the Act.

Section 183.—An ordinary occupancy holding may be sold free of incumbrances for arrears of rent.

The only protection given to an incumbrance in a sale of an ordinary occupancy holding for arrears of rent is—

Section 186*d*. 1*st*.—If there is any surplus after satisfying decree, the surplus shall remain 2 months in court to allow creditors to bring forward their claims.

Sections 188 *and* 189. 2*ndly*.—A person having a voidable interest in the land may pay the amount of the decree into court, and such payment shall entitle him to possession of the holding until the debt is discharged.

Section 185.—The Local Government may, by notification in the Gazette, apply the same rule to occupancy holdings as apply to permanent tenures.

Sections 190 *and* 191.—A decree holder may bid at a sale for arrears of rents, the judgment-debtor may not.

Sections 313 *to* 326—Of C. P. C., providing for the setting aside of the sale on the application of the purchaser, is excluded from the operation of this chapter.

Sections 313 to 326 of C. P. C.

Under Chapter XVII, section 210—

A rayat with transferable occupancy rights cannot contract himself out of the right to transfer. Tenure-holders "*may*" do so if they *wish*. Query, may rayats holding at fixed rates? In reference to the provisions regarding incumbrances, I would only say that I would like to see no distinction made between permanent tenure-holders and occupancy rayats: all should have their holdings sold up subject to notified incumbrances. If there is to be a distinction, a rayat whose right to hold at a fixed rate has not been decided by a competent court, should be subject to the same law in this respect as the ordinary occupancy rayat. It must be remembered that rayats who sublet more than half their holdings will only receive the benefit of the notified incumbrance clauses after the passing of the proposed new registration law.

I need not say that I strongly approve of the power to contract themselves out of their right, to transfer being withheld from rayats with occupancy rights.

T. M. Gibbon.

Much discussion ensued, more especially on the point of zarpaishgi mortgages being deemed by law Deeds of Transfer. By far the largest "dealings with rayats" for land are now conducted on this basis, and any interference with transfer, or any restrictions on it as they now stand in the Bill, would have a most injurious effect on our business, and make the reiterate advice of officials, and even of the Bengal Government itself, that we should deal only with the rayat for land for indigo cultivation, a mockery.

On the other hand, it would be most injurious to the rayat. His only way of getting money at fair interest will be closed, and the present universal custom of raising money to pay off arrears of rent or other debts by giving over a small portion of his holding on zarpaishgi mortgage will be subverted, and the consequences be that he will fall entirely into the hands of the mahajans.

We have never looked on a zarpaishgi mortgage as a regular transfer. For instance, a rayat owes Rs. 40 to his mahajan, or for arrear of rent. He comes to us, complains that he is paying 36 per cent. interest and offers one bighs of his land for 8 years at an annual rent of Rs. 5, the rent to go as a set-off against the loan. At the end of the period the land reverts to the rayat This is the cheapest way any rayat can get out of a difficulty. It is fast becoming the universal custom of North Behar, and by fostering it, it will do more for the rayat and less harm to the zemindar than any system of takavi advances that Government can organize.

The following points were noted by the General Secretary for reference to counsel for opinion, viz —

(*a*). What effect has the word "void" in section 32(5) as against a transferee?
(*b*). What would the landlord's remedy be?

On section 23.—The meeting was of opinion that the permission to rayats holding at fixed rates to use their holding in such way as to render it unfit for agricultural purposes should be limited to rayats whose right to *hold* at *fixed rates* has been decided by court.

Sections 175 *to* 192.—In reference to the above, the meeting considered it advisable that *occupancy holdings* should be placed on the same footing as tenures, viz. they should be *first* sold subject to incumbrances.

(*a*). If it be necessary to give the landlord any consideration to induce him to sanction transfer, his power of veto or pre-emption should be taken from him, and a registration fee on all transfers allowed him in place of it.

(*b*). If the landlord's right of pre-emption is to be retained in the Bill, all occupancy holdings other than those at *fixed rates* by virtue of a decree of court, should be subject to pre emption the same as ordinary holdings.

(*c*). If it be necessary to place any restriction on transfer with a view to prevent land jobbery and rack-renting, it would be better to f rbid the transferee subletting or retransferring within a given time, say three years, than to provide restrictions that will affect others than transferees.

After discussion Mr. Gibbon proposed as above (*c*).

Mr. MacGregor proposed as an amendment—

That if the entire holding only is to be transferable, the transferee should be allowed to sublet, but not to enhance, *i. e* demand more rent than he pays himself to his landlord.

On these being put to the meeting, the votes for each were found to be equal.

On the Secretary asking the opinion of the meeting as to whether the transfer of a portion of a holding should be allowed, or only the whole as it stands on the rent-roll, the question was discussed freely. Mr. MacGregor urged strongly that as planters we did not want to purchase rayats' jotes, but only a few kottahs probably of each when the land was high and fit for indigo ; consequently that, unless a portion of a holding were transferable, planters would not avail themselves of transfer to any large extent. Most of those present disagreed with him as to the advisability of permitting transfer of a portion of a holding, as being unfair to landlords.

On the question of what our general proposition should be as to transfer—

Twelve different modes of treating transferability were cited by Mr. Gibbon, viz.—

1. As it stands in the Bill.
2. Transferability with right reserved to landlord to pre-empt on all transfers—transfers of tenures as well as on transfer of occupancy holdings.
3. Transfer with right reserved to landlord to pre-empt on transfer of all occupancy holdings other than occupancy holdings at fixed rates decreed by a court of law.
4. Any of the above with power reserved to the rayats to contract themselves out of their rights.
5. Any of the above with additional restrictions on subletting or other restrictions to prevent land-jobbing.
6. Transfer of the "whole" of the holding without restriction, but with prohibition of a transfer of a portion, giving the landlord a remedy in case of transfer of a portion without his consent.
7. Free transfer.
8. Transfer to resident cultivators to be alone permitted.
9. Transfer with restriction by landlord on receipt of fee.
10. Absolute prohibition of transfer.
11. Make no mention of transfer
12. Transfer permitted by voluntary sale or by decree of court for arrears of rent; in no other case mortgage prohibited.

Of these No. 7, free transfer of the whole holding, was decided by the meeting to be most desirable.

Mr. Gibbon said he would propose that transfer of the whole holding be unrestricted, but subject to a registration fee to the landlord as above, and that transfer of a portion be prohibited, giving the landlord a remedy.

The meeting adopted his view.

Section 210. *Contract.*—Power of rayat to contract himself out of his rights objected to by zemindar.

Read letter from Supreme Government of Bengal, dated 5th of April 1884 (para. 28), referring to a suggestion on the part of the zemindar that rayats should be allowed to contract themselves out of their rights to transfer and sublet.

The meeting was of opinion that the rayat should not be allowed to contract himself out of his right, as his ignorance and apathy would most certainly be traded on as Mr. Gibbon remarks.

But if Government are prepared to make provision in the Bill to see that the rayat acts, or has acted, as a free agent, receiving a fair equivalent in surrendering his undoubted right, the meeting would be prepared to support the zemindars' proposal.

W. B. Hudson,

General Secretary, B. I. P. Association.

N B.—The date of the next meeting was fixed on the third Saturday in August, *i. e.* 16th of August 1884.

BEHAR INDIGO PLANTERS' ASSOCIATION.

Proceedings at a General Committee Meeting held at the Planters' Club, Mozufferpore, on Saturday, the 16th August 1884.

PRESENT:

The Honorable T. M. Gibbon, C. I. E.,
Dr. J. H G. Hill,
Messrs. M. Gale,
M. Macleod,
T. J. Fraser,
Robt. Wilson,
H. C. Spry,
W. B. Hudson,
} Members of the General Committee.

Many other planters were also present watching the proceedings.

Doctor Hill was requested to take the chair.

Business.—The proceedings of last meeting confirmed.

II.—The General Secretary requested the Chairman to put the question to the Meeting whether the proceedings of this day should conclude the discussion of the Tenancy Bill, for the present, until the proceedings of the official conferences have been published.

The Meeting decided that another meeting should be held next month, on the 15th of September or other date to be notified by the Secretary, when he had applied to Government for a copy of the proceedings of the Bankipore official Conference.

In accordance with the notice of the *subjects for discussion* at the present meeting Mr. Gibbon was requested by the Chairman to commence with—

(A).—*Subletting* and its incidences in the Bill.

(B). *Restrictions*, sections 31(G), 37, 38.

(C).—*Protection* to under rayats, sections 62 and 63.

(D).—*Surrender and abandonment*, Chapter XIII Distraint, more especially sections 139c2 & 3, 154, 155, 156.

(E).—*Incumbrances*, Chapter XV, particularly sections 177, 178(6), 183, 188(1), 189.

(F).—*Contract*, section 210.

Section 37 and 38 containing restrictions on subletting were first discussed by several members who had not been present at the last meeting. The several discussions on this point at former meetings were gone through.

It was strongly urged by several members that the period allowed by the Bill was insufficient and contrary to the present custom of these districts of Behar, and on reference by the Secretary to the proceedings of our last meeting [remark (C)] he was requested to record the opinion of the meeting that Mr. Gibbon's proposal should be adopted, *viz.*—

"That if Government deem it necessary to restrict subletting of occupancy holdings with a view to discourage land-jobbing, such restriction should be made applicable only to holdings that are sublet *within a given time* of a transfer or purchase."

Mr. Robert Wilson proposed that we should go further on this point, and that to prevent all land-jobbing and rack-renting no enhancement should be allowed by transferees.

It was pointed out that this was substantially the same as Mr. Macgregor's proposal at our last meeting, and also that the votes for and against that proposal were equal. On being put to the vote the Chairman declared it carried that the proposal as is stood in last meeting's proceedings be adopted by this meeting, *viz.*—

"If it be necessary to place any restriction on transfer with a view to prevent land-jobbing and rack-renting it would be better to forbid the transferee subletting or retransfering within a given time, say, three years, than to provide restrictions that will affect others than transferees."

It was pointed out by Mr. Gibbon that to give effect to Mr. Wilson's proposal it would be necessary to enact that a transferee subletting the land should not recover from his sub-tenant more rent than he pays his landlord, and that he agreed with Messrs. Wilson, Macgregor, and others that this was desirable in every way, but that, however stringent the law might be, it could always be evaded by the transferee demanding a bonus and letting the land from year to year, a bonus at the commencement of each year and the usual rent at the end of it.

Surrender and abandonment.—Section 95.—Messrs. Fraser and Spry pointed out to the meeting the position a sub-tenant was placed in where an occupancy rayat in collusion with his landlord resigned or abandoned his holding for the purpose of voiding a sublease. This was discussed at much length and various remedies suggested, but all were open to the objection that any recommendation made by planters would be looked on as an attempt to secure there own interests to the detriment of the zemindars. The broad fact is well-known to the officers of Government that tenants-at-will, and much more sub-tenants, are at mercy of their zemindar unless in the latter case full protection is afforded then in cases of collusion between superior and inferior landlords. Where planters are sub-tenants they must take their chance with the rest of the class.

Distraint and incidence on sub-tenants. Sections 139, 139 (2) and (3), 154, 155, 156.

The above were read and discussed, and the opinion of the meeting taken on each

Mr. Gibbon reminded the meeting of the recommendation of the Behar Rent Committee of 1878 concurred in by the planter members.

Note.—On reference to those proceedings it is found that it was then proposed by Mr. Gibbon "That the Law of Distraint be entirely abolished, and that the summary procedure suggested in the Bengal Bill (1878) for the more speedy realization of rents be adopted in its place" and that the following members of the Behar Rent Committee voted in favour of that proposal, *viz.*—

Mr. F. M. Halliday, Commissioner of Patna.
„ C. F. Worsley, Collector of Mozufferpore.
„ G. Anderson, Planter and Zemindar.
„ T. M. Gibbon „ „
„ W. B. Hudson, Planter.
„ J. F. Browne, Judge, Patna.
Mr. D. N. Reid, Planter.
„ G. Toynbee, Collector, Patna.
„ M. Finucane, Setlement Officer (Secretary).
Baboo Bimala Ch. Bhattacharjee, Deputy Magistrate.

This recommendation not having been acted on, that is, Government not having provided a summary procedure to facilitate the recovery of undisputed arrears of rents, we are not in a position to urge the total abolition of distraint with all its attendant abuses. But with free transfer the value of occupancy holdings in the market will be so increased that there should be no real difficulty in recovering any rent due by decree and sale of holdings, and the abolition of distraint be merely a question of time.

Protection afforded to sub-rayat by sections 143 (2), 154, 154 (3), 155 (1), 156 noted.

Under the circumstances the meeting did not desire to record any opinion on the subject.

Incumbrances.—Chapter IV, more specially in reference to subletting, sections 177, 178 (b), 183, 188 (1), 189.

These were discussed and many questions put to Mr. Gibbon as to the intention of the framers of the Bill on several points.

It was ultimately decided that the following point should be put to Counsel for opinion, *viz.*—

Query.—Reading section 177 with 97—

Whether a mortgage of a portion of a holding by any occupancy rayat would be considered an incumbrance under section 177 and receive the same protection as is afforded to mortgages of whole holdings under the Bill?

Contract.—Section 210. The meeting was unanimously of opinion that if this section is not upheld in its entirety, the Bill will afford no real protection to the rayat under the present state of matters in Behar, and that Mr. Gibbon should urge strenuously the maintenance of this section in its entirety.

With a vote of thanks to the Chairman, the meeting concluded.

(Sd.) W. B. HUDSON,

General Secretary, B. I. P. A.

J. E. S.—Reg. No. 7458C—377—7-10-84.

No. 2072T—R, dated Darjeeling, the 29th September 1884.

From—H. H. RISLEY, ESQ., Offg. Under-Secretary to the Govt. of Bengal, Revenue Department,

To—The General Secretary to the Behar Indigo Planters' Association.

I AM directed to acknowledge the receipt of your letter dated 16th September 1884, submitting a copy of the proceedings of the Behar Indigo Planters' Association at two meetings held on the 26th July and 16th August 1884, to discuss the provisions of the Bengal Tenancy Bill on the transferability of occupancy right and the ryot's right to sublet his holding. The Lieutenant-Governor desires me to say that a copy of these papers will be submitted to the Government of India, to whom the final report of this Government on the Bill has been already sent.

E. deS.—Reg. No. 7459C—320—7-10-84.

No. 2071T—R, dated Darjeeling, the 29th September 1884.

From—H. H. Risley, Esq., Offg. Under-Secretary to the Government of Bengal, Revenue Department,

To—The Secretary to the Government of India, Legislative Department.

In continuation of Mr. MacDonnell's letter No. 1993T—R, dated 23rd September 1884, I am directed to submit, for the information of the Government of India, a copy of a letter, dated 16th idem, from the General Secretary to the Behar Indigo Planter's Association, with its enclosures, containing the Association's views on the provisions of the Bengal Tenancy Bill regarding the transferability of occupancy right and the ryot's right to sublet his holding.

C. E. G.—Reg. No. 7520C—327—9-10-84.

Dated Calcutta, the 25th September 1884.

From—The Revd. John P. Ashton, Secretary of the Calcutta Missionary Conference,

To—The Secretary to the Government of Bengal, Legislative Department.

The Calcutta Missionary Conference has been considering the Bengal Tenancy Bill, being attracted to it by the idea that it is an effort to ameliorate the condition of the peasantry of Bengal in whom it takes a deep interest. The Conference would have published something on the matter before this, but they have found difficulty in getting information on the literary or legal side of the question.

We should esteem it a favour if the Government would allow the Superintendent of Printing to supply us with two or three copies of—

Report, Government of Bengal, on Bengal Tenancy Bill, 1883, two vols.

Correspondence of Secretary of State on same Bill.

Hollingberry on zemindary settlement, two vols.

Also I should be glad to know if our views should be delayed till January or February, whether they would be of any service so late in the season.

Hoping you will excuse the liberty I take in troubling you thus.

C. E. G.—Reg. No. 7601C—327—11-10-84.